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LEGISLATIVE DEPARTMENT.

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THE

# UNREPEALED GENERAL ACTS

OF THE

# GOVERNOR GENERAL IN COUNCIL

WITH CHRONOLOGICAL TABLE.

1199

FROM 1877 TO 1881, BOTH INCLUSIVE.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA
1884.

# PREFACE.

THIS volume is published under the authority of the Government of India, and contains, with two exceptions, such of the unrepealed Acts of the Governor General in Council passed between the years 1877 and 1881 (both inclusive) as extend, or are extendible, to the whole of British India or to the three Presidency-towns, or as extend to the whole of British India except the Scheduled Districts.

2. The exceptions referred to are Act VI of 1877 (*for postponing the day on which the Opium Act, 1876, is to come into force*) and Act XIV of 1880 (*to provide for certain matters in connection with the taking of a Census*). The former Act is not reprinted, as it is now only in force in the Andaman and Nicobar Islands and the Pargana of Mánpur, to which places the Opium Act, 1878, has not been extended; and the latter Act is spent.

3. The volume is founded on the official copies of the Acts preserved in the Legislative Department.

4. The only changes made in reprinting are the following :—

(*a*) Sections and chapters which have been entirely repealed have been omitted, but their marginal notes or headings have been retained for easy reference. Sections, clauses or words which have only been repealed in particular localities have been retained, but references to the repeal have been given in footnotes.

(*b*) Where an Act directs that a section, a clause or words be inserted in a former Act, in reprinting the former Act the insertion has been made, and a reference to the amending Act has been given in a footnote.

(*c*) Where one Act refers to another and such reference is directed by a subsequent Act to be read as if made to the latter Act, the number, year and title of the latter Act have been substituted in the text.

(*d*) Section-numbers occurring in the body of the Acts have been uniformly printed in figures, instead of in words.

(*e*) The number and year of each enactment referred to in the text have been noted on the inner margin for easy reference.

(*f*) In addition to the short title of the Act, the number and title of the chapter, and the sections comprised in the page, have been noted as a heading to each page.

5. Some footnotes have been added. They are chiefly (*a*) cross-references to Indian Acts, (*b*) references to English Statutes from which Indian Acts have been copied, and (*c*) references to notifications in Indian Gazettes declaring the local extent of Acts and the dates on which they came into force. It is hardly necessary to say that these notes are not authoritative.

6. The Chronological Table prefixed enumerates all Acts of the Governor General in Council passed during the period comprised in this volume, and shows at what pages of the volume those now printed will be found. It also shows whether a given Act has been repealed, wholly, in part, or locally, or amended, and, in the case of unrepealed local Acts, where they have been printed or where it is proposed to print them, as the case may be.

7. The greater portion of the work connected with the preparation of this volume has devolved upon Mr. F. G. Wigley of the Legislative Department, to whom much credit is due for the intelligent manner in which it has been performed.

8. A volume containing the Unrepealed General Acts passed during the years 1882 to 1884 is now in the Press; and when it is published it is intended to issue a revised edition of the volumes containing the Unrepealed General Acts passed during the years 1834 to 1876.

J. M. MACPHERSON,
*Deputy Secy. to the Govt. of India,*
*Legislative Department.*

SIMLA;
*The 20th October, 1884.*

# CORRIGENDA.

P. 8. *Insert the following as a footnote to section 9—*

"In the Panjáb, suits under this section can be instituted only in Revenue Courts, except where the Local Government otherwise directs. See Act XVIII of 1884, section 45."

Pp. 107 and 154 In the footnotes, *for* "[a, b]" *read* "[a—a]."

P. 119. In the first footnote, *for* "Act XVII of 1877, section 40" *read* "Act XVIII of 1884, sections 43 and 50."

P. 120. *Strike out the letter* "a" in the fourth line.

P. 121. In the second footnote, *for* "section 10" *read* "section 108."

P. 147. In the margin, *for* "Extent" *read* "extension."

P. 258. In the marginal note to section 22, *for* "knwoingly" *read* "knowingly."

P. 309. In the footnote, *for* "Máunbhúm" *read* "Mánbhúm."

P. 332. In the footnote, *for* "Part" *read* "Part I."

P. 347. At the end of section 13, *for* "[a]" *read* "[b]".

P. 353. In section 34, first line, *for* "provision" *read* "provisions."

P. 362. In the fourteenth line, *for* "the person" *read* "the persons."

Pp. 364, 427 and 447. *Prefix the letter* "[a]" to the footnotes.

P. 454. *Prefix the letter* "[c]" to the third footnote.

P. 394. To the head-line preceding section 6 *affix the letter* "c."

P. 398. To the head-line preceding section 24 *affix the letter* "a."

P. 404. Before section 55 *insert the letter* "a."

P. 466. In the fourth line, *for* "usua" *read* "usual."

# CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR GENERAL IN COUNCIL.*

1877 TO 1881.

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1877 | I | Specific Relief ... | Rep. in part in certain localities—<br>II of 1882.<br>IV " <br>Printed, General Acts, p. 5. |
| " | II | Amending Act XIII of 1875 (Probate and Letters of Administration)... | Printed, General Acts, p. 40. |
| " | III | Registration ... | Amended—<br>XII of 1879, ss. 104-107.<br>I of 1880, s. 3.<br>XIX of 1883, s. 12.<br>Rep. in part (by implication), X of 1882, s. 483.<br>Printed, General Acts, p. 45. |
| " | IV | Presidency Magistrates... | Rep. (except s. 57), X of 1882.<br>Section 57 : printed, General Acts, p. 72. |
| " | V | Straits Settlements Emigration ... ... ... | Printed, General Acts, p. 75. |
| " | VI | Postponing operation of Opium Act, XXIII of 1876 ... ... | Rep., I of 1878, and now in force only in the Andaman and Nicobar Islands and the Pargána of Mánpur.<br>Not reprinted. |
| " | *VII* | *Amending North-Western Provinces Local Rates Act, 1871* ... ... | *Rep., III of 1878.* |
| " | *VIII* | *Licenses, North-Western Provinces* .. ... | *Rep., II of 1878.* |
| " | IX | Revising and amending Act XXIII of 1867 (Murderous Outrages, Panjáb ... | Printed, Panjáb Code. |
| " | *X* | *Civil Procedure Code* ... | *Rep., XIV of 1882.* |

* Acts which have been entirely repealed or which are spent, are noted in italics.

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1877 | XI | Military Lunatics ... | Printed, General Acts, p. 87. |
| „ | *XII* | *Amending Act VI of 1876 (Chutia Nagpur Encumbered Estates)* ... | *Rep., V of 1884.* |
| „ | XIII | Embankments, Burma ... | Printed, British Burma Code. |
| „ | XIV | Incumbered Estates, Broach and Kaira ... | Rep. in part and amended, XXI of 1881.<br>Printed, Bombay Code. |
| „ | XV | Limitation ... ... | Rep. in part, locally, V of 1882.<br>Amended XVII of 1877, s. 18.<br>XII of 1879, s. 108.<br>VIII of 1880<br>V of 1881, s. 156.<br>Printed, General Acts, p. 91. |
| „ | XVI | Amending Act X of 1876 (Bombay Revenue Jurisdiction) ... ... | Printed, Bombay Code. |
| „ | XVII | Courts Panjáb ... | Rep. (except s. 18) XVIII of 1884.<br>Section 18 : printed, Panjáb Code. |
| „ | *XVIII* | *Salt* ... ... | *Rep. XII of 1882.* |
| „ | XIX | Amending Bengal and Madras Courts Acts, VI of 1871 and III of 1873 (Ministerial Officers) ... | Printed, Madras Code.<br>„ Lower Provinces Code.<br>„ North-Western Provinces Code. |
| 1878 | I | Opium ... ... | Printed, General Acts. p. 127. |
| „ | II | License-tax, Northern India ... ... | Rep. in part and amended, VI of 1880.<br>Printed, North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code. |
| „ | III | Local Rates, North-Western Provinces ... | Rep. in part and amended, XIV of 1883, ss. 56-58.<br>Amended, VIII of 1879.<br>Printed, North-Western Provinces Code. |
| „ | IV | Local Rates, Oudh ... | Rep. in part and amended, XIV of 1883, ss. 59-61.<br>Printed, Oudh Code. |
| „ | V | Local Rates, Panjáb ... | Rep. in certain districts, XX of 1883.<br>Printed, Panjáb Code. |
| „ | VI | Treasure-trove ... | Printed, General Acts, p. 137. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1878 | VII | Forests ... ... | Rep. in part, locally, VI of 1879.<br>Printed, General Acts, p. 146. |
| „ | VIII | Sea Customs... ... | Printed, General Acts, p. 183. |
| „ | *IX* | *Native Press*... ... | *Rep., III of 1882.* |
| „ | X | Local Rates, Central Provinces ... ... | Printed, Central Provinces Code. |
| „ | XI | Arms ... ... | Rep. in part, XI of 1882.<br>Printed, General Acts, p 252. |
| „ | XII | Amending Panjáb Laws Act (IV of 1872) ... | Rep. in part, X of 1879.<br>Printed, Panjáb Code. |
| „ | *XIII* | *Distressed Seamen* ... | *Rep., V of 1883.* |
| „ | XIV | Assimilation of powers (North-Western Provinces and Oudh) ... | Rep. in part, XIII of 1879.<br>Printed, North-Western Provinces Code.<br>„ Oudh Code. |
| „ | XV | Hussainábád Endowment | Not reprinted. |
| „ | *XVI* | *Amending Act IX of 1878 (Native Press)* ... | *Rep., III of 1882.* |
| „ | XVII | Ferries (Northern India) | Amended—<br>North-Western Provinces and Oudh, XIV of 1883, ss. 64 and 65.<br>Panjáb, XX of 1883, ss. 78 and 79.<br>Central Provinces, I of 1883, ss. 43 and 44.<br>Printed, North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code.<br>„ Central Provinces Code.<br>„ Ajmer Code.<br>„ Assam Code. |
| „ | *XVIII* | *Amending Code of Civil Procedure (Act X of 1877)* ... | *Rep., XII of 1879, s. 4.* |
| 1879 | I | Stamps ... ... | Rep. in part and amended, IX of 1884, s. 10.<br>Printed, General Acts, p. 266. |
| „ | II | Amending Act XX of 1875 (Central Provinces Laws) | Printed, Central Provinces Code. |
| „ | III | Destruction of Records ... | Printed, General Acts, p. 309. |
| „ | IV | Railways ... ... | Amended, IV of 1883.<br>Printed, General Acts, p. 315. |
| „ | V | Amending Act XI of 1876 (Presidency Banks) ... | Printed, General Acts, p. 332. |

| Year. | Number | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1879 | VI | Preservation of Elephants | Amended, II of 1883.<br>Printed, General Acts, p. 333. |
| „ | *VII* | *Additional Financial Commissioner, Panjáb* ... | *Spent.* |
| „ | VIII | Land-revenue (North-Western Provinces) ... | Rep. in part, XIII of 1882.<br>Printed, North-Western Provinces Code. |
| „ | IX | Coast-lights (Burma) ... | Printed,[a] Madras Code.<br>„ Bombay Code.<br>„ Lower Provinces Code.<br>„ British Burma Code. |
| „ | *X* | *Takkávi* (*Northern India*) | *Rep. XII of 1884* (except as regards the recovery of advances and interest thereon). |
| „ | XI | Local Authorities Loans ... | Printed, General Acts. p. 335. |
| „ | XII | Amending *Code of Civil Procedure* and Registration and Limitation Acts, (Acts X, III and XV of 1877) ... ... | Rep. in part, XIV of 1882.<br>Printed, General Acts, p. 338. |
| „ | XIII | Civil Courts (Oudh) ... | Printed, Oudh Code. |
| „ | XIV | Hackney Carriages ... | Printed, North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code.<br>„ Central Provinces Code.<br>„ British Burma Code.<br>„ Coorg Code.<br>„ Ajmer Code.<br>„ Assam Code. |
| „ | XV | Port Commissioners (Rangoon) ... ... | Printed, British Burma Code. |
| „ | XVI | Transport of Salt by Sea | Printed, Madras Code.<br>„ Bombay Code. |
| „ | XVII | Dekkhan Agriculturists' Relief ... ... | Rep. in part and amended, XXIII of 1881 and XXII of 1882.<br>Printed, Bombay Code. |
| „ | XVIII | Legal Practitioners ... | Amended, IX of 1884.<br>Printed, General Acts, p. 342. |
| „ | XIX | Raipur and Khattra Laws | Printed, Lower Provinces Code. |

[a] The Act is also in force in the Andaman and Nicobar Islands, but no local Code has been issued for the Islands.

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1879 | XX | Glanders and Farcy ... | Printed,[a] North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code.<br>„ Central Provinces Code.<br>„ British Burma Code.<br>„ Coorg Code.<br>„ Ajmer Code.<br>„ Assam Code. |
| „ | XXI | Foreign Jurisdiction and Extradition ... | Rep. in part, X of 1882.<br>Printed, General Acts, p. 358. |
| 1880 | I | Religious Societies ... | Printed, General Acts, p. 364. |
| „ | II | District Cesses and Rural Police (British Burma)... | Printed, British Burma Code. |
| „ | III | Cantonments ... | Printed, General Acts, p. 369. |
| „ | IV | Portuguese Treaty ... | Printed, General Acts, p. 378. |
| „ | V | Boundaries (British Burma) | Printed, British Burma Code. |
| „ | VI | License Acts Amendment | Printed, Bombay Code.<br>„ Madras Code.<br>„ North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code. |
| „ | VII | Merchant Shipping ... | Rep. in part, XIV of 1882.<br>Printed, General Acts, p. 392. |
| „ | VIII | Correcting clerical error in Limitation Act (XV of 1877) ... ... | Printed, General Acts, p. 411. |
| „ | IX | Bombay Civil Courts Act Amendment ... | Printed, Bombay Code. |
| „ | *X* | *Multan District Laws* ... | *Rep., XIII of 1883.* |
| „ | XI | Burma Courts Act (Additional Recorder of Rangoon) ... ... | Printed, British Burma Code. |
| „ | XII | Kázís ... ... | Printed, General Acts, p. 412. |
| „ | XIII | Vaccination ... | Printed, North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code.<br>„ Central Provinces Code.<br>„ British Burma Code.<br>„ Ajmer Code.<br>„ Coorg Code.<br>„ Assam Code. |

[a] The Act is also in force in the Andaman and Nicobar Islands, the Cantonment of Morár and the Pargana of Mánpur, but no Local Codes have been issued for these places.

| Year. | Number. | Subject-matter. | How disposed of |
|---|---|---|---|
| 1880 | *XIV* | *Census* ... ... | *Spent.* |
| „ | XV | Revenue Jurisdiction (Bombay) ... | Rep. in part, XII of 1884.<br>Printed, Bombay Code. |
| „ | XVI | Madras Irrigation and Canal Company ... | Not reprinted. |
| 1881 | I | Táj Mahál's Pension ... | |
| „ | II | Pegu and Sittang Canal ... | Printed, British Burma Code. |
| „ | III | Indian Securities ... | Printed, General Acts, p. 413. |
| „ | IV | Port-dues (Madras) ... | Printed, Madras Code. |
| „ | V | Probate and Administration | Printed, General Acts, p. 421. |
| „ | VI | District Delegates ... | Printed, General Acts, p. 454. |
| „ | VII | Amending Bengal Cess Act (Bengal Act IX of 1880). | Printed, Lower Provinces Code. |
| „ | VIII | Petroleum ... ... | Printed, General Acts, p. 457. |
| „ | IX | Administrator General ... | Printed, General Acts, p. 466. |
| „ | X | Coroners ... ... | Rep. in part, X of 1882.<br>Printed (in part), General Acts, p. 468.<br>„ „ Madras Code. |
| „ | XI | Municipal Taxation ... | Printed, General Acts, p. 470. |
| „ | XII | Rent (North-Western Provinces) ... ... | Printed, North-Western Provinces Code. |
| „ | XIII | Fort William ... | Printed, Lower Provinces Code. |
| „ | XIV | Banáras Family Domains... | Printed, North-Western Provinces Code. |
| „ | XV | Factories ... ... | Printed, General Acts, p. 472. |
| „ | XVI | Obstructions in Fairways . | Printed, General Acts, p. 478. |
| „ | XVII | Portuguese Convention ... | Printed, General Acts, p. 480. |
| „ | XVIII | Land-revenue (Central Provinces) ... ... | Printed, Central Provinces Code. |
| „ | XIX | Forests (British Burma) .. | Printed, British Burma Code. |
| „ | XX | Incumbered Estates (Sindh) | Amended, XI of 1884. |
| „ | | | Printed, Bombay Code. |
| „ | XXI | Incumbered Estates (Broach and Kaira) ... ... | Printed, Bombay Code. |
| „ | XXII | Excise (Northern India, British Burma and Coorg) | Printed, North-Western Provinces Code.<br>„ Panjáb Code.<br>„ Oudh Code.<br>„ Central Provinces Code.<br>„ British Burma Code.<br>„ Coorg Code.<br>„ Ajmer Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1881 | XXIII | Dekkhan Agriculturists' Relief ... ... | Printed, Bombay Code. |
| ,, | XXIV | Panjáb Laws Amendment | Printed, Panjáb Code. |
| ,, | XXV | Bánkí Laws ... ... | Printed, Lower Provinces Code. |
| ,, | XXVI | Negotiable Instruments ... | Printed, General Acts, p. 493. |

THE

# UNREPEALED GENERAL ACTS

OF

# THE GOVERNOR GENERAL IN COUNCIL.

## THE SPECIFIC RELIEF ACT, 1877.

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SCHEDULE.—ENACTMENTS REPEALED.

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## ACT No. I OF 1877.

*Received the Governor General's assent on the 7th February, 1877.*

# An Act to define and amend the law relating to certain kinds of Specific Relief.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:— Preamble.

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# PART I.

## PRELIMINARY.

1. This Act may be called "The Specific Relief Act, 1877": Short title.

It extends to the whole of British India, except the Scheduled Districts[a] as defined in Act No. XIV of 1874; Local extent. of 1874.

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[a] The Act has been extended in its entirety to the following Scheduled Districts, namely:—

| | | |
|---|---|---|
| Sindh .. .. ... | See *Gazette of India* | 4th December, 1880, Part I, page 676. |
| Western Jalpáigorí . | Ditto ... ... | 16th December, 1882, Part I, page 511. |
| The Districts of Hazáríbagh, Lohárdaga and Manbhum and Pargana Dhálbhum in the District of Singbhum .. | Ditto ... | 16th February, 1878, Part, I, page 82. |
| The Jhansí Division | Ditto .. | 26th September, 1879, Part I, page 592 |
| The Scheduled Districts of the Panjab ... ... | Ditto ... ... | 22nd September, 1877, Part I, page 562. |
| The Scheduled Districts of the Central Provinces | Ditto ... ... | 13th December, 1879, Part I, page 772 |
| Coorg ... ... | Ditto ... ... | 3rd June, 1882, Part I, page 217. |
| The Districts of Kamrup, Nauzong, Darrang, Sibsagar, Lakhimpur, Goalpára (excluding the Eastern Dvars), Silhat and Kachar (excluding the North Kachar Hills) .. .. | Ditto ... ... | 10th November, 1877, Part I, page 663. |
| The Cantonment of Morár | Ditto . . | 7th September, 1878, Part I, page 559 |

Sections 2 and 9 of the Act have been extended to the taluqs of Bhadráchalam and Rákapilli and the Rampa Country,— see *Gazette of India*, 4th October, 1879, Part 1, page 630.

Commencement.

And it shall come into force on the first day of May, 1877.

Repeal of enactments.

2. On and from that day the Acts specified in the schedule hereto annexed shall be repealed to the extent mentioned in its third column.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

'obligation.'

'obligation' includes every duty enforceable by law:

'trust.'

'trust' includes every species of express, implied, or constructive fiduciary ownership:

'trustee.'

'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character:

*Illustrations.*

(*a*) Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.' A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(*b*) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(*f*) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

'settlement.'

'settlement' means any instrument (other than a will or codicil as defined

X of 1865 by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act. Words defined in Contract Act.

IX of 1872

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed— Savings.

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of the Indian Registration Act[a] on documents.

III of 1877.

5. Specific relief is given— Specific relief how given.

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a Receiver.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief. Preventive relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law. Relief not granted to enforce penal law.

# PART II.

## OF SPECIFIC RELIEF.

## CHAPTER I.

### OF RECOVERING POSSESSION OF PROPERTY.

#### (*a*) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.[b] Recovery of specific immoveable property.

XIV of 1882.

[a] See Act III of 1877, section 2.

[b] See Act XIV of 1882, section 3.

Suit by person dispossessed of immoveable property.

**9.** If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

### (*b*) *Possession of Moveable Property.*

Recovery of specific moveable property.

**10.** A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.[a] XIV of 1882.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

*Illustrations.*

(*a*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872, IX of 1872.

(*e*) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

[a] See Act XIV of 1882, section 3.

**11.** Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :— Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

*Illustrations*—

of clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (*b*)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

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## CHAPTER II.

### Of the Specific Performance of Contracts.

### (*a*) *Contracts which may be specifically enforced.*

**12.** Except as otherwise provided in this chapter, the specific performance of any contract may in the discretion of the Court be enforced— Cases in which specific performance enforceable.

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

*Illustrations*—

of clause (*a*)—

[a]A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (*b*)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

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[a] Repealed wherever the Indian Trusts Act, 1882, is in force,—see Act II of 1882, sections 1 & 2.

*Illustrations*—contd.

of clause (*c*)—*contd.*

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (*d*)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

**13.** Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

IX of 1872.

*Illustrations.*

(*a*) A contracts to sell a house to B for a lákh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

**14.** Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

*Illustrations.*

(*a*) A contracts to sell B a piece of land consisting of 100 bíghás. It turns out that 98 bíghás of the land belong to A, and the two remaining bíghás to a stranger, who refuses to part with them. The two bíghás are not necessary for the use or enjoyment of the 98 bíghás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed, at the suit of B, to convey to B the 98 bíghás and to make compensation to him for not conveying the two remaining bíghás; or B may be directed, at the suit of

A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and lands for two lákhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

**15.** Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

*Illustrations.*

(*a*) A contracts to sell to B a piece of land consisting of 100 bíghás. It turns out that 50 bíghás of the land belong to A, and the other 50 bíghás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bíghás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bíghás to him on payment of the purchase-money.

(*b*). A contracts to sell to B an estate with a house and garden for a lákh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent

**16.** When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from

another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part. part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections. Bar in other cases of specific performance of part of contract.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:— Purchaser's rights against vendor with imperfect title.

(*a*) if the vendor or lessor has subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance. Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

*Illustrations—*

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

**20.** A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same.

*Illustration.*

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs 10,000. A refuses to

apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

*(b) Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

**21.** The following contracts cannot be specifically enforced:—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

XIV of 1882. And, save as provided by the Code of Civil Procedure,[a] no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

*Illustrations—*

of clause (*a*)—

A contracts to sell, and B contracts to buy, a lákh of rupees in the four per cent. loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs 1,000 per chest:

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[a] See Act XIV of 1882, section 3

*Illustrations*—contd.

of clause (*a*)—*contd.*

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

of clause (*b*)—

A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed:

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease:

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery:

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B:

A contracts with B to execute certain works which the Court cannot superintend:

A contracts to supply B with all the goods of a certain class which B may require:

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach:

A contracts to marry B.

The above contracts cannot be specifically enforced.

*Illustrations*—contd.

of clause (*c*)—

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

of clause (*d*)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

of clause (*e*)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lákh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

of clause (*f*)—

A company existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

of clause (*g*)—

A contracts to let for 21 years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a

*Illustrations*—contd.

of clause (*g*)—*contd.*

right of running carriages over the whole line on certain terms and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

of clause (*h*)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(*c*) *Of the Discretion of the Court.*

Discretion as to decreeing specific performance.

**22.** The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods it is necessary for its owner to maintain an expensive embank-

ment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

*Illustrations.*

(*e*) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(*h*) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B

(*j*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

*Illustration.*

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(*d*) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto;

(*b*) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(*e*) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

**24.** Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

*Illustrations—*

of clause (*a*)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

of clause (*b*)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats

*Illustrations*—contd.

of clause (*b*)—*contd.*

the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

of clause (*c*)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

**25.** A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

*Illustrations.*

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to perform it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

### (*f*) *For whom Contracts cannot be specifically enforced except with a Variation.*

Non-enforcement except with variation.

**26.** Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

*Illustrations—*

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint

bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented: B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(*d*) A and B enter into negociations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

### (*g*) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

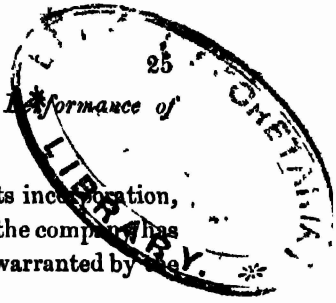
**27.** Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;



(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

*Illustrations*—

of clause (*b*)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

of clause (*c*)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

### (*h*) *Against whom Contracts cannot be specifically enforced.*

**28.** Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:— What parties cannot be compelled to perform.

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract,

as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

*Illustrations—*

of clause (*c*)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific perfcrmance of the agreement.

(*i*) *The Effect of dismissing a Suit for Specific Performance.*

Bar of suit for breach after dismissal.

**29.** The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(*j*) *Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary directions to execute settlements.

**30.** The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

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## CHAPTER III.

### Of the Rectification of Instruments.

When instrument may be certified.

**31.** When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either

party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

*Illustrations.*

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

**32.** For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

**33.** In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

**34.** A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

*Illustration.*

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

## CHAPTER IV.

### OF THE RESCISSION OF CONTRACTS.

When rescission may be adjudged.

**35.** Any person interested in a contract in writing[a] may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

*Illustrations*—

of clause (*a*) —

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

of clause (*b*)—

Rescission for mistake.

A, an attorney, induces his client B, a Hindú widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

**36.** Rescission of a contract in writing[b] cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in

**37.** A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specific-

a, b The words "in writing" are repealed wherever the Transfer of Property Act, 1882, is in force,— see Act IV of 1882, sections 1-2.

ally enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly. suit for specific performance.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require. Court may require party rescinding to do equity.

## CHAPTER V.

### Of the Cancellation of Instruments.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. When cancellation may be ordered.

If the instrument has been registered under the Indian Registration Act,[a] the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation. III of 1877.

*Illustrations.*

(*a*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January, 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands dated the 1st October, 1876, and procures the lease to be registered under the Indian Registration Act.[b] B may obtain the cancellation of this lease. III of 1877.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according

[a, b] See Act III of 1877, section. 2.

to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

**40.** Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

**41.** On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

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## CHAPTER VI.

### Of Declaratory Decrees.

Discretion of Court as to declarations of status or right.

**42.** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a 'person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

*Illustrations.*

(*a*) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only

for their lives, and it may also declare the interests of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lákh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(*e*) The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

**43.** A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. **Effect of declaration.**

*Illustration.*

A, a Hindú, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

## CHAPTER VII.

### OF THE APPOINTMENT OF RECEIVERS.

Appointment of Receivers discretionary.

**44.** The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure. [a] XIV of 1882.

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## CHAPTER VIII.

### OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

**45.** Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature:

Provided—

(*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(*d*) that the applicant has no other specific and adequate legal remedy; and

(*e*) that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize any High Court—

(*f*) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal;

(*g*) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown; or

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[a] See Act XIV of 1882, section 3.

(*k*) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made.

**46.** Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Procedure thereon.

Order in alternative.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

**47.** If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

**48.** Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

**49.** The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

**50.** Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to frame rules.

**51.** Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

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# PART III.

## OF PREVENTIVE RELIEF.

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## CHAPTER IX.

### Of Injunctions generally.

Preventive relief how granted.

**52.** Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

**53.** Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.[a] XIV of 1882.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

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## CHAPTER X.

### Of Perpetual Injunctions.

Perpetual injunctions when granted.

**54.** Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

*Illustrations.*

(*a*) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

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[a] See Act XIV of 1882, section 33.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The Directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The Directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakíl, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(*m*) A, a Hindú widow in possession of her deceased husband's property,

commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may sue for an injunction to restrain her.

(*n*) A, B and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(*o*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(*q*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by

publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

**55.** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

*Illustrations.*

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV.[a] B may obtain an injunction, not only to restrain A from going on with the buildings, but also to put down so much of them as obstructs B's lights.

XV of 1877.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

XLV of 1860.

(*f*) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54, and as illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

**56.** An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

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[a] See Act XV of 1877, section 2.

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

*Illustrations.*

(*a*) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

**57.** Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative

agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

*Illustrations.*

(*a*) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b*) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*) A contracts with B to sing for 12 months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*) B contracts with A that he will serve him faithfully for 12 months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

## SCHEDULE.

(*See section 2.*)

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| VIII of 1859 ... | Civil Procedure ... ... | Sections 15 and 192. |
| XIV of 1859 ... | Limitation ... ... ... | Section 15.[a] |
| XXIII of 1861 ... | Civil Procedure ... ... | Section 26. |
| IX of 1872 ... | Contract ... ... ... | In section 28, the second clause of exception 1. |

[a] This section (except the portion relating to the limitation of suits, which was repealed by Act IX of 1871) appears to be still in force in the following Scheduled Districts, *viz.*:—
The Tarái District,—see *Gazette of India*, 23rd September, 1876. Part I, p. 505.
The Kumáon and Garhwál Districts,—see *Gazette of India*, 4th November, 1876, Part I, p. 606.
The Panch Maháls,—see *Gazette of India*, 21st January, 1879, Part I, p. 417.

ACT No. II OF 1877.

*Received the Governor General's assent on the 14th February, 1877.*

## An Act to amend Act No. XIII of 1875.

Preamble.

WHEREAS it is expedient to define the expression 'High Court' as used in Act No. XIII of 1875 (*to amend the law relating to Probates and Letters of Administration*), sections 2, 3 and 4; It is hereby enacted as follows:— XIII of 1875.

'High Court' defined in Act XIII of 1875, sections 2, 3 and 4.

1. The expression 'High Court' in each of the said sections shall mean, and be deemed to have always meant,—

(*a*) a High Court for the time being established under the twenty-fourth and twenty-fifth of Victoria, chapter 104: 24 & 25 Vic., cap. 104.

(*b*) the Chief Court of the Panjáb:

(*c*) the Court of the Recorder of Rangoon.

Saving of certain grants of probate and administration.

2. Nothing in this Act shall be deemed to affect the validity of any grant of probate or letters of administration with effect throughout the whole of British India heretofore made by any Court other than the Courts specified in section one.

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## THE INDIAN REGISTRATION ACT, 1877.

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## ACT No. III of 1877.

*Received the Governor General's assent on the 14th February, 1877.*

## An Act for the Registration of Documents.

Whereas it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:— Preamble.

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## PART I.

### Preliminary.

1. This Act may be called "The Indian Registration Act, 1877": Short title.

Local extent.

It extends to the whole of British India,[a] except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude from its operation ;[b]

Commencement.

And it shall come into force on the first day of April, 1877.

Repeal of enactments.

2. On and from that day Act No. VIII of 1871 shall be repealed. VIII of 1871.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared under such Act, or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April, 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease."

"Lease" includes a counterpart, kabúliyat, an undertaking to cultivate or occupy, and an agreement to lease :

"Signature." "Signed."

"Signature" and "signed" include and apply to the affixing of a mark :

"Immoveable property."

"Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass :

"Moveable property."

"Moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property :

"Book."

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

"Endorse-

"Endorsement" and "endorsed" include and apply to an entry in writ-

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the Districts of Hazáríbágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

It has also, under the same Act, been extended to that part of the Khásí and Jaintiá Hills District which is comprised within the limits of the Civil Station and Cantonment of Shillong, and declared to be not actually in force in the other parts of the Khásí and Jaintiá Hills District, in the Gáro Hills or in the Nágá Hills District,—see *Gazette of India*, 16th November, 1878, Part I, page 662.

[b] The whole of the Scheduled Districts of the Madras Presidency have been excluded from the operation of the Act,—see *Fort St. George Gazette*, 4th October, 1881, Part I, page 516.

ing by a registering officer on a rider or covering slip to any document tendered for registration under this Act: "ment." "Endorsed."

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority:[a] "Minor."

"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot: "Representative."

"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name: "Addition."

"District Court" includes the High Court in its ordinary original civil jurisdiction: and "District Court."

"District" and "Sub-District" respectively mean a district and sub-district formed under this Act. "District." "Sub-District."

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# PART II.

## Of the Registration-establishment.

**4.** The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government, Inspector General of Registration.

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred. Branch Inspector General of Sindh.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

**5.** For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts. District and sub-districts.

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[a] See Act IX of 1875.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars and Sub-Registrars.

**6.** The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Offices of Registrar and Sub-Registrar.

**7.** The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

Inspectors of Registration-offices.

**8.** The Local Government may also appoint officers to be called Inspectors of Registration-offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Military cantonments may be declared sub-districts or districts.

**9.** Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector General, and in the case of a district, what authority shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

Absence of Registrar from his district or vacancy in his office.

**10.** Whenever any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district, including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his district.

**11.** Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

Absence of Sub-Registrar or vacancy in his office.

**12.** Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Appointments under section 10, 11 or 12 to be reported to Government.

**13.** All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Suspension, removal and dismissal of officers.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration and establishments of registering officers.

**14.** Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act.

Seals of registering officers.

**15.** The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs: "The seal of the Registrar (*or* of the Sub-Registrar) of ."

Register-books.

**16.** The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Forms.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number

of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Fire-proof boxes.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

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# PART III.

## Of Registrable Documents.

Documents of which registration is compulsory.

**17.** The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864,[a] or Act No. XX of 1866,[b] or Act No. VIII of 1871,[c] or this Act, came or comes into force (that is to say),—

XVI of 1864.
XX of 1866.
VIII of 1871.

(*a*) Instruments of gift of immoveable property:

(*b*) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property:

(*c*) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(*d*) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent:

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Exception of composition-deeds;

Nothing in clauses (*b*) and (*c*) of this section applies to—

(*e*) any composition-deed;

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[a] Repealed by Act XX of 1866, section 3.
[b] Repealed by Act VIII of 1871, section 2.
[c] Repealed by this Act, section 2.

(*f*) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or — and of transfers of shares and debentures in Land Companies,

(*g*) any endorsement upon or transfer of any debenture issued by any such Company;

(*h*) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will when executed create, declare, assign, limit or extinguish any such right, title or interest; — documents merely creating right to obtain other documents.

(*i*) decrees and orders of Courts and awards;

(*j*) grants of immoveable property by Government;

(*k*) instruments of partition made by Revenue-officers;

[a](*l*) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.[b] — Authorities to adopt.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),— — Documents of which registration is optional.

(*a*) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

(*b*) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(*c*) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17:

(*d*) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property:

(*e*) wills:

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[a] Where the Land Improvement Loans Act, 1883, is in force, *read* "(*l*) orders granting loans and instruments of collateral security granted under the Land Improvement Loans Act, 1883." (See Act XIX of 1883, sections 1, 2 & 12.)

[b] Also, memoranda appointing new trustees under the Religious Societies' Act,—see Act I of 1880, section 3.

(*f*) all other documents not required by section 17 to be registered.

Documents in language not understood by registering officer.

**19.** If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents containing interlineations, blanks, erasures or alterations.

**20.** The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description of parcels.

**21.** (*a*) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(*b*) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

Documents containing maps or plans.

(*c*) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Failure to comply with rules as to description of houses and land.

**22.** Failure to comply with the provisions contained in section 21, clause (*b*), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

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# PART IV.

## Of the Time of Presentation.

Time for presenting documents.

**23.** Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for

that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision where delay in presentation is unavoidable.

**24.** If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine, not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of British India.

**25.** When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied

(*a*) that the instrument was so executed, and

(*b*) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Provision where office is closed on last day of period for presentation.

**26.** Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

**27.** A will may at any time be presented for registration or deposited in manner hereinafter provided.

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# PART V.

## Of the Place of Registration.

Place for registering documents

**28.** Save as in this Part otherwise provided, every document mentioned in section 17, clauses (*a*), (*b*), (*c*) and (*d*), and section 18, clauses (*a*), (*b*) and

relating to land.

(*c*), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

**29.** Every document, other than a document referred to in section 28 and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration by Registrar.

**30.** (*a*) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrar at Presidency-town and Lahore.

(*b*) The Registrar of a district including a Presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Registration or acceptance for deposit at private residence.

**31.** In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

But such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

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# PART VI.

## Of presenting Documents for Registration.

Persons to present documents for registration.

**32.** Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-attorney recognizable for purposes of section 32.

**33.** For the purposes of section 32, the powers of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(*a*) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides:

(*b*) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate:

(*c*) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India:

Proviso as to persons infirm, or in jail, or exempt from appearing in Court.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (*a*) and (*b*) of this section:—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

persons who are in jail under civil or criminal process; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by registering officer.

**34.** Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine, not exceeding ten times the amount of the proper registration-fee in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(*b*) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(*c*) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

Procedure on admission of execution.

**35.** If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

Procedure on denial of execution, &c

If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears [a] to the registering officer [a] to be a minor, an idiot or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document [b] as to the person so denying, appearing or dead: [b] Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

## PART VII.

### Of enforcing the Appearance of Executants and Witnesses.

Procedure where appearance of executant or witness is desired.

**36.** If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

Officer or Court to issue and cause service of summons.

**37.** The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

**38.** A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Law as to summonses, commissions and witnesses.

**39.** The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any

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[a-a, b-b] These words were inserted by Act XII of 1879, section 104.

summons or commission issued, and any person summoned to appear, under the provisions of this Act.

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# PART VIII.

## Of presenting Wills and Authorities to adopt.

Persons entitled to present wills and authorities to adopt.

**40.** The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt.

**41.** A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied—

(*a*) that the will or authority was executed by the testator or donor, as the case may be;

(*b*) that the testator or donor is dead; and

(*c*) that the person presenting the will or authority is, under section 40, entitled to present the same.

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# PART IX.

## Of the Deposit of Wills.

Deposit of wills.

**42.** Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

Procedure on deposit of wills.

**43.** On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his register-book No. 5 the superscription aforesaid and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal of sealed cover deposited under section 42.

**44.** If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly authorized agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Proceedings on death of depositor.

**45.** If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Re-deposit.

When such copy has been made, the Registrar shall re-deposit the original will.

Saving of Act X of 1865, section 259.

X of 1865.

**46.** Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

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# PART X.

## Of the Effects of Registration and Non-registration.

Time from which registered document operates.

**47.** A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Registered documents relating to property when to take effect against oral agreements.

**48.** All non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

**49.** No document required by section 17 to be registered—

shall affect any immoveable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to land to take effect against unregistered documents.

**50.** Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 17, and clauses (*a*) and (*b*) of section 18, shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*) and (*l*) of the same section.

EXPLANATION.—In cases where Act No. XVI of 1864[a] or Act No. XX of 1866[b] was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under Act No. VIII of 1871[c] or this Act. XVI of 1864. XX of 1866. VIII of 1871.

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# PART XI.

## OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

### (*A*) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

**51.** The following books shall be kept in the several offices hereinafter named (that is to say),—

In all registration-offices—

Book 1, "Register of non-testamentary documents relating to immoveable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous Register."

In the offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89[d] which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (*d*) and (*f*) of section 18 which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more

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[a] Repealed by Act XX of 1866, section 3.
[b] Repealed by Act VIII of 1871, section 2.
[c] Repealed by this Act, section 2.
[d] See Act XII of 1879, section 105.

than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

Endorsements on document presented. Receipt for document.

**52.** The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

Documents admitted to registration to be copied.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

Entries to be numbered consecutively.

**53.** All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current indexes and entries therein.

**54.** In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to be made by registering officers.

**55.** Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III, and Index No. IV.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Extra particulars in Indexes.

Indexes Nos. I, II, III and IV shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar.

**56.** Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Such copy to be filed by Registrar.

Every Registrar receiving such copy shall file it in his office.

Registering officers to allow inspection of certain Books and Indexes, and to give certified copies of entries.

**57.** Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

### (*B*) *As to the Procedure on admitting to Registration.*

Particulars to be endorsed on documents admitted to registration.

**58.** On every document admitted to registration, other than a copy of a decree or order, or a copy of [a] a certificate under the Land Improvement Act, 1871,[a] sent by the Collector to be registered, there shall be endorsed from time to time the following particulars (that is to say):— XXVI of 1871.

(*a*) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(*b*) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

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[a] Where the Land Improvement Loans Act, 1883, is in force, *read* "an order under the Land Improvement Loans Act, 1883." (See Act XIX of 1883, sections 1, 2 & 12)

(*c*) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

**59.** The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered, and number and page of book in which it has been copied.

**60.** After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

Endorsements and certificate to be copied.

**61.** The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Document to be returned.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Procedure on presenting document in language unknown to registering officer.

**62.** When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

Power to administer oaths.

**63.** Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

Record of substance of statements.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

### (*C*) *Special Duties of Sub-Registrar.*

Procedure on registration of document relating to land situate in several sub-districts.

**64.** Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure where document relates to land situate in several districts.

**65.** Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

### (*D*) *Special Duties of Registrar.*

Procedure on registering documents relating to land.

**66.** On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars

subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure on registration under section 30, clause (*b*).

**67.** On any document being registered under section 30, clause (*b*), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(*E*) *Of the controlling Powers of Registrars and Inspectors General.*

Registrar to superintend and control Sub-Registrars.

**68.** Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

Inspector General to superintend registration-offices. His power to make rules.

**69.** The Inspector General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each district;

declaring what territorial divisions shall be recognized under section 21;

regulating the amount of fines imposed under sections 24 and 34, respectively;

regulating the exercise of the discretion reposed in the registering officer by section 63;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;

declaring the holidays that shall be observed in the registration-offices;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette and shall then have the same force as if they were inserted in this Act.

His power to remit fines.

**70.** The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

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## PART XII.

### Of Refusal to Register.

Reasons for refusal to register to be recorded.

**71.** Every Sub-Registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.

**72.** Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order:

and if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in

sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where Sub-Registrar refuses to register on ground of denial of execution.

**73.** When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Procedure of Registrar on such application.

**74.** In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall as soon as conveniently may be enquire—

(*a*) whether the document has been executed;

(*b*) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Order to register and procedure thereon.

**75.** If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.[a]

XIV of 1882.

[a] See Act XIV of 1882, section 3.

Refusal by Registrar.

**76.** Every Registrar refusing—

(*a*) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(*b*) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

Suit in case of refusal.

**77.** Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

## PART XIII.

### Of the Fees for Registration, Searches and Copies.

Fees to be fixed by Local Government.

**78.** Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents:

for searching the registers:

for making or granting copies of reasons, entries or documents, before, on or after registration:

and of extra or additional fees payable—

for every registration under section 30:

for the issue of commissions:

for filing translations:

for attending at private residences:

for the safe custody and return of documents:

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

The Local Government may from time to time, subject to the like approval, alter such table. Alteration of fees.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office. Publication of fees.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents. Fees payable on presentation.

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## PART XIV.

### Of Penalties.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

XLV of 1860.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both: Penalty for certain other offences.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; Making false statements before registering officer.

(*b*) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; Delivering false copy or translation.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; False personation.

XLV of 1860. (*d*) abets within the meaning of the Indian Penal Code anything made punishable by this Act. Abetment of offences under this Act.

Registering officer may commence prosecutions.

**83.** A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a[a] Magistrate of the second[a] class:

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency-towns, in the manner prescribed by the Code of Criminal Procedure,[b] and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns for the time being in force. X of 1882.

Registering officers to be deemed public servants.

**84.** Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act. XLV of 1860.

[c]A Registrar shall, but a Sub-Registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure. X of 1872.

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## PART XV.

### MISCELLANEOUS.

Destruction of unclaimed documents.

**85.** Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bond fide* done or refused in his official capacity.

**86.** No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

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a-a These words were inserted by Act XII of 1879, section 106.

b See Act X of 1882, section 3.

c This clause has been repealed by implication by section 483 of the new Code of Criminal Procedure (Act X of 1882), which is to a different effect.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure. Nothing so done invalidated by defect in appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58. Registration of documents executed by Government officers or certain public functionaries.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

XXVI of 1871. 89. [a] Every officer granting a certificate under the Land Improvement Act, 1871, shall send a copy of such certificate[a] to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file[b] the copy[b] in his Book No. 1. Certificates under Land Improvement Act, 1871.

XIV of 1882. [c]Every Court granting a certificate under section 316 of the Code of Civil Procedure[d] shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.[c]

*Exemptions from Act.*

VIII of 1871. 90. Nothing contained in this Act or in Act No. VIII of 1871[e] or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:— Exemption of certain documents executed by or in favour of Government.

(*a*) Documents issued, received or attested by any officer engaged in mak-

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[a-a] Where the Land Improvement Loans Act, 1883, is in force, *read* "Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order,"—see Act XIX of 1883, sections 1, 2 and 12.

[b-b, c-c] These words were inserted by Act XII of 1879, section 107.

[d] See Act XIV of 1882, section 3.

[e] Repealed by this Act, section 2.

ing a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement;

(*b*) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey;

(*c*) Documents which, under any law for the time being in force, or[a] filed periodically in any revenue-office by patwáris or other officers charged with the preparation of village-records;

(*d*) Sanads, inám title-deeds and other documents purporting to be, or to evidence, grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

**91.** Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses (*a*), (*b*) and (*c*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese registration-rules confirmed

**92.** All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

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## ACT No. IV of 1877.

*Received the Governor General's assent on the 28th February, 1877.*

## An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts; It is hereby enacted as follows:—

**1** *to* **56.**—[*Repealed by Act X of 1882.*]

Fees for summonses and warrants.

**57.**—A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend

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[a] *Sic.* Read "are."

and give evidence or to produce documents, in which case there shall be paid a fee of four annas:

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty. Power to remit fees.

58 *to end.*—[*Repealed by Act X of 1882.*]

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# THE STRAITS SETTLEMENTS EMIGRATION ACT, 1877.

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THE SECOND SCHEDULE.

## ACT No. V OF 1877.

*Received the Governor General's assent on the 14th March, 1877.*

# An Act to regulate the Emigration of Native Labourers from the Presidency of Fort Saint George to the Straits Settlements.[a]

Preamble. WHEREAS it is expedient to regulate emigration under engagements to labour from the Presidency of Fort Saint George [a] to the Straits Settlements; It is hereby enacted as follows:—

### I.—PRELIMINARY.

Short title. 1. This Act may be called "The Straits Settlements Emigration Act, 1877":

Local extent. It extends only to the territories under the government of the Governor of Fort Saint George in Council; [a]

[a] As power is given by section 102, sub-section (1), of the Indian Emigration Act, XXI of 1883, to extend this Act to the whole of British India, it is placed among the General Acts.

Commencement.

And it shall come into force [a] on such date as the Governor of Fort Saint George in Council, with the previous sanction of the Governor General in Council, may, by notification in the *Fort Saint George Gazette*, direct.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Emigrate."

"Emigrate" denotes the departure of any Native of India out of the said territories, under an engagement to labour in the said Settlements:

"Emigrant."

"Emigrant" means a person who "emigrates" within the meaning of the above definition:

"Magistrate."

"Magistrate" means a District Magistrate,[b] a Sub-divisional Magistrate [c] or any other person appointed by the Governor of Fort Saint George in Council to perform the functions of a Magistrate under this Act:

"Vessel."

"Vessel" includes anything made for the conveyance by water of human beings or property.

From what ports emigration lawful.

3. It shall not be lawful to emigrate except from such ports as may from time to time be declared by the Governor of Fort Saint George in Council, by a notification in the *Fort Saint George Gazette*, to be ports from which emigration under this Act shall be lawful.

The Local Government may at any time, by a like notification, revoke any such notification.

## II.—Emigration Agents.

Appointment of Emigration Agents.

4. The Government of the Straits Settlements may, from time to time, appoint such persons as the Governor of Fort Saint George in Council approves, to act as Emigration Agents at such ports as aforesaid.

Any Emigration Agent so appointed may be suspended or removed by the Government of the Straits Settlements.

## III.—Protectors of Emigrants.

Appointment of Protectors of Emigrants.

5. The Governor of Fort Saint George in Council shall direct such persons as he thinks fit to act as Protectors of Emigrants under this Act at such ports and for such local areas as may be assigned to them respectively, and may, with the sanction of the Governor General in Council, assign to such persons such establishment as the Governor of Fort Saint George in Council thinks fit.

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[a] Came into force in the Madras Presidency on 1st January, 1878,—see *Fort Saint George Gazette*, 20th November, 1877, p. 777.

[b, c] See Act X of 1882, section 3.

*(IV.—Emigration Depôts. V.—Recruiters of Labourers. Secs. 6-10.)*

General duties of Protector.

6. Every Protector of Emigrants, in addition to any special duties assigned to him by this Act, shall, so far as is in his power, protect and aid all emigrants with his advice or otherwise, and cause all the provisions of this Act to be duly complied with.

Inspection of vessels with return-emigrants.

He may also inspect on arrival all vessels bringing return-emigrants to the port at which he is Protector, and inquire into the treatment received by such emigrants both during the period of their service in the Straits Settlements and also during the voyage, and shall make a report thereon to the Governor of Fort Saint George in Council.

Such Protector shall also aid and advise such return-emigrants, so far as he reasonably can, when called upon by them to do so.

## IV.—Emigration Depôts.

Establishment and licensing of depôt.

7. Every Emigration Agent shall establish a suitable depôt for emigrants at the port at which he is Agent. Such depôt may be licensed by the local Protector of Emigrants after being inspected and approved of by him.

Fee for license.

For every such license the Emigration Agent shall pay to the Protector of Emigrants a fee of fifteen rupees.

Inspection by Protector.

8. The Protector of Emigrants may, at any time, examine into the state of the depôt and the manner in which the emigrants are therein lodged, fed, clothed and otherwise provided for and attended to, and shall do so at least once a year.

And he may at any time cancel the license, if he considers that the depôt for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established, or if the local Emigration Agent fails to comply with any of the requirements of this Act.

Agent and his subordinates to afford facilities for inspection.

The Emigration Agent and all persons in charge of, or employed in, the depôt, shall give the Protector every facility for making such inspections as he may deem necessary or proper, and shall afford him all such information respecting the depôt and the emigrants as he may require.

Supply of medical aid and comforts.

9. The Emigration Agent shall provide at the depôt such medical aid and comforts as the Protector may from time to time direct.

## V.—Recruiters of Labourers.

Protector to license recruiters.

10. Each Protector of Emigrants shall license so many fit persons as he deems necessary to be recruiters of labourers for the Straits Settlements; and no person shall engage, or attempt to engage any Native of India to emigrate, or shall otherwise act or be employed as a recruiter of labourers, except under a license from a Protector of Emigrants.

Duration and cancelment of license.

**11.** No such license shall be in force for a longer period than one year; and in case of misconduct on the part of any recruiter, the Protector of Emigrants who granted it may cancel his license before the expiration of the period for which it was granted.

Form of license.

**12.** Every such license shall specify the local limits within which the person licensed may recruit labourers, and shall be in the form set forth in the first schedule hereto annexed.

Fee for license.

For every such license the recruiter shall pay to the Protector a fee of five rupees.

Recruiter to obtain Magistrate's countersignature to license.

**13.** No recruiter shall engage, or attempt to engage, labourers in any district without having first exhibited his license to a Magistrate in such district, and obtained the countersignature of such Magistrate thereupon.

No Magistrate shall countersign a recruiter's license unless and until he has satisfied himself, by such enquiry as he thinks fit, that the licensee is not by character or from any other cause unfitted to be a recruiter under this Act.

If any Magistrate who has countersigned a license afterwards finds reason to think that the licensee is by character or other cause unfitted to be a recruiter under this Act, he may require the licensee to produce the license and may cancel his signature; or he may, if he thinks fit, impound the license and send it to the Emigration Agent for cancellation.

Every Magistrate refusing to countersign a recruiter's license or cancelling his signature as aforesaid shall, without delay, report his refusal or cancellation and the grounds of it to the Protector of Emigrants who has authority to cancel the recruiter's license.

## VI.—Contracts with Emigrants.

Conditions of validity of emigration-contracts.

**14.** No contract made by a recruiter with a Native of India to emigrate shall be enforceable by the recruiter or his principal unless it—

(*a*) is expressed in writing;

(*b*) is executed by the recruiter on behalf of some principal in the Straits Settlements;

(*c*) states the terms, if any, agreed on as to the redemption of the recruit's engagement for employment, or of the unexpired term of such engagement;

and unless—

(*d*) the term of the recruit's employment, the nature of the services to be performed by him, and the rate of wages to be paid in respect of the same are registered in the manner provided in section 18.

But nothing contained in this section shall be deemed to prevent such Native from insisting, if he thinks fit, that such contract shall be performed.

Contents of such contracts.

**15.** Every such contract shall—

(*a*) contain an engagement for employment to be provided by such principal for a definite term not exceeding three years ; and

(*b*) specify the nature of the services to be performed by such recruit and the rates of wages (not less than twelve cents a day for an able-bodied male adult) payable in respect of the same.

Certain agreements declared void.

**16.** Save as provided by section 14, clause (*c*), every agreement entered into by a Native of India in the territories subject to the Governor of Fort Saint George in Council, to pay money to any person in the Straits Settlements, in consideration of pecuniary or other assistance given to such Native to emigrate, shall be illegal and void.

Every contract not containing the particulars required by section 15 shall be illegal and void.

Medical examination of intending emigrants.

**17.** Every recruit who has entered into such a contract as aforesaid shall be brought by the recruiter before the Civil Surgeon of the district or such other medical officer as the Local Government appoints in this behalf or, in default of such appointment, before such medical officer as the Magistrate directs.

The medical officer shall thereupon examine the recruit, and shall either reject him or shall certify that he is in a fit state of health and able in point of physical condition to proceed to the Straits Settlements and to work there.

Dependents.

If it is intended that any persons shall accompany the recruit as his dependents, the recruiter shall also bring them before the medical officer for the purpose of obtaining certificates that they are in a fit state of health and able in point of physical condition to perform the journey to the Straits Settlements ; and the medical officer shall examine such persons and shall give or refuse certificates according to his opinion as to their fitness and ability.

Form of certificates.

Certificates shall be in the form set forth in the second schedule hereto annexed ; and the recruiter shall pay to the medical officer such fee for each person so examined as the Local Government may from time to time prescribe.

Recruit and dependent to appear before Magistrate,

**18.** Every certified recruit and every accompanying dependent shall appear with the recruiter before a Magistrate in the district within which the contract with the recruit was entered into.

and be examined.

The Magistrate shall thereupon inspect the instrument of contract and the medical certificate of the recruit, and shall, apart from the recruiter, examine the recruit with reference to his contract.

If it appears on such examination that the recruit understands the nature of the contract he has entered into, and that he is willing to fulfil the same, the Magistrate shall register—

(*a*) the name, the father's name and the age of such recruit:

(*b*) the name of the village or place in which he resides:

(*c*) the port of embarkation to which it is intended he shall proceed:

(*d*) the name of his employer:

(*e*) the term of his employment, the nature of the services to be performed by him and the rate of wages to be paid in respect of the same.

The recruit shall thereupon be deemed an emigrant under this Act.

Registration when to be refused.

If the Magistrate thinks that the recruit does not understand the nature of the contract into which he has entered, or has been induced to enter into it by fraud or misrepresentation, or finds that the contract is not in accordance with section 15, he shall refuse to register the particulars specified as aforesaid, and record his reasons for such refusal.

Examination of dependents.

**19.** On the appearance of any person claiming to be dependent on an emigrant, the Magistrate, after inspecting the medical certificate, shall, apart from the recruiter, examine such person, if able to give intelligent answers to questions, as to his dependence upon the emigrant whom he is about to accompany, and as to his willingness to accompany such emigrant.

If the Magistrate is satisfied that such dependence and willingness exist, he shall register the dependent as a dependent on such emigrant.

But if the Magistrate sees reason to doubt the existence of such dependence or willingness, he may refuse to register the alleged dependent, and, if so, shall record his reasons for such refusal.

Copies of registered matters.

**20.** The Magistrate shall furnish to every emigrant an authenticated copy on substantial paper of the matters registered under sections 18 and 19.

Copy of entry in register to be sent to Emigration Agent and Protector.

**21.** A copy of every entry made in the registry-book by a Magistrate, shall be forthwith forwarded by such Magistrate to the Emigration Agent and to the Protector of Emigrants.

Registration before Protector.

**22.** The registration required by sections 18 and 19 shall, in the case of emigrants recruited in any local area for which a Protector of Emigrants has been appointed, be effected before him instead of a Magistrate; and such Protector shall furnish to the emigrant one copy of the matters so registered, and another copy of the same matters to the Emigration Agent.

Fee for registration.

**23.** For the registration of every recruit under section 18, the recruiter shall pay to the Magistrate or to the Protector of Emigrants, as the case may

be, such fee, not exceeding one rupee, as may be from time to time directed by the Local Government.

## VII.—Arrival at Depôt and Procedure thereon.

Arrival at depôt to be reported.

**24.** The arrival of each emigrant at the depôt shall immediately be reported by the person in charge of the depôt to the Emigration Agent, and by such Agent to the Protector of Emigrants.

The Emigration Agent may institute such examination of the emigrants as he thinks fit in order to satisfy himself of their fitness to emigrate.

Duty of Protector on arrival of emigrants.

**25.** The Protector of Emigrants shall, within 48 hours after the arrival at the depôt of each emigrant not registered by himself, question such emigrant as to the mode in which he has been treated on his journey to the depôt, and shall at the same time examine the emigrant's contract and the copy of the register furnished to him under section 20.

If for any reason further enquiry is necessary, he shall make such enquiry forthwith.

Countersignature of register.

**26.** If in the opinion of the Protector of Emigrants the examination and enquiry made under section 25 disclose no valid reason against the fulfilment of the contract, and the emigrant has not become physically unfit for emigration, the Protector and the Emigration Agent shall countersign the emigrant's copy of the register; and the Emigration Agent shall make out and deliver to the emigrant an embarkation-pass signed by the Emigration Agent, and countersigned by the Protector, stating the name and the age of the emigrant and the name of his father, certifying that he has been duly registered for emigration to the Straits Settlements and mentioning the port of debarkation.

Grant of embarkation-pass.

When emigrant to be sent back to place of registration.

**27.** If the Protector of Emigrants considers that any emigrant is physically unfit to emigrate, and that he has not dishonestly represented himself as physically fit;

or that any such irregularity has occurred in the recruitment of any such emigrant as makes it just to vacate the contract;

or if the Emigration Agent refuses without the consent of the Protector to countersign the emigrant's copy of the register as required by section 26, or to be bound by the contract;

Payment of expenses of sending him back.

the Protector of Emigrants may order the Emigration Agent, or the recruiter with whom the contract was made, forthwith to pay to him such reasonable sum as is necessary to enable such emigrant to return to the place where his name was registered under section 18; and may take any steps he thinks necessary for the conveyance of such emigrant to such place;

and any emigrant who from his state of health is in the opinion of the Protector of Emigrants physically unfit to undertake such return shall be entitled to be fed, lodged and attended to at the port of embarkation at the expense of the Emigration Agent until he is reported by the Protector of Emigrants fit to undertake such return to such place.

Payment of expenses of dependent accompanying emigrant.

28. If a dependent has accompanied such emigrant, the Protector of Emigrants may order the Emigration Agent or recruiter to pay such sum as is necessary to enable him to return to the place at which his name was registered under section 19, as well as to feed or lodge him during the detention (if any) of the emigrant at the depôt.

Effect of such dependent's unfitness from ill-health to return to the Straits.

29. If the Protector of Emigrants has reason to think that any dependent is in such a state of health that his journey to the Straits Settlements, or his detention in the depôt, would be dangerous to himself or others, he shall so certify to the Emigration Agent, and thereupon the emigrant to whom such dependent is attached shall be entitled, if he so wishes, to return as if he himself had been found under section 27 to be physically unfit to emigrate.

If the emigrant still desires to emigrate, then the dependent shall be kept and returned to the place at which he was registered as if he were an emigrant falling under section 27.

Compensation to emigrant or dependent for ill-treatment on journey to depôt.

30. If upon the arrival of any emigrant or dependent at the depôt it appear that, during the journey thither, he has suffered any ill-treatment, or the recruiter has failed to provide him with proper and sufficient food and lodging, the Protector of Emigrants may order the Emigration Agent to pay him a reasonable sum by way of compensation.

Failure of Emigration Agent, &c., to pay such expenses.

31. On failure of the Emigration Agent or of such recruiter for twenty-four hours to comply with an order of the Protector for the payment of any sum ordered to be paid under any of the four last preceding sections, the Protector may pay the same to, or on behalf of, the emigrant.

Every sum so paid shall be recoverable by the Protector, with six per cent. per annum interest from the date of payment, from the Emigration Agent, or from such recruiter.

No further proof shall be required by any Court in any such case than that the Protector gave such Emigration Agent or recruiter an order to pay such money, and that the Emigration Agent or recruiter for a space of twenty-four hours made default in complying therewith.

Suits against Emigration Agent for

32. Whenever the Emigration Agent refuses, without the consent of the Protector, to countersign an emigrant's copy of the register as required by section 26, or is chargeable with a breach of any duty which any contract

with an emigrant expressly or by implication imposes upon him, the Protector may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of damages for the breach of such contract. breach of contract.

In every such suit the contract entered into by the recruiter shall be deemed to have been entered into by, and to be binding on, the Emigration Agent.

## VIII.—Emigrant Vessels.

**33.** No Master or other person in charge of a vessel shall receive on board any emigrant unless such vessel has been licensed, under the law for the time being in force relating to the carriage by sea of Native passengers,[a] to carry passengers for the intended voyage, and unless the Master of such vessel has obtained a certificate from the Protector of Emigrants authorizing him to receive on board the number of emigrants specified therein. Emigrants not to be received on board vessels not licensed under Native Passengers Act, or without Protector's certificate.

No such certificate shall be granted by the Protector of Emigrants unless he has satisfied himself that the vessel has been licensed as aforesaid, and that provisions and water for the number of emigrants to be specified in the certificate according to the scale prescribed under such law [b] have been actually put on board such vessel. Protector not to grant certificate unless satisfied that vessel has been licensed and has provisions on board.

**34.** On embarkation, every emigrant shall deliver to the Master of the vessel the embarkation-pass granted to him under section 26, and the Master shall not receive any emigrant on board unless he delivers up such pass. Emigrant to give his pass to Master.

**35.** The Emigration Agent shall be personally present at the embarkation of all emigrants, and shall see that the Master duly examines the passes of the emigrants, and shall himself also examine such passes. Emigration Agent to be present at embarkation.

The Emigration Agent shall not permit any emigrant to remain on board who has not a pass.

**36.** The Master of every vessel carrying emigrants shall, after the embarkation of the emigrants, and before the departure of the vessel, give to the Emigration Agent a list of all emigrants on board, signed by himself and mentioning the port of debarkation, and shall retain a counterpart of such list signed by the Emigration Agent. Master to deliver list of emigrants.

A copy of such list signed by the Emigration Agent and Master shall be sent by the Emigration Agent to the Protector of Emigrants before the vessel sails.

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[a, b] See Act VIII of 1876.

## IX.—Supplementary Powers.

Power to prohibit emigration to the Straits Settlements.

**37.** Whenever the Governor General in Council has reason to believe that proper measures have not been taken for the protection of emigrants and the enforcement of the engagements entered into with them immediately upon their arrival at the Straits Settlements, or during their residence therein, the Governor General in Council may, by a notification published in the *Gazette of India*, declare that emigration under this Act to the said Settlements shall cease from a day to be specified in such notification.

When any notification has been published under this section, emigration under this Act and the making of contracts to emigrate to the Straits Settlements shall be unlawful from the day specified in such notification.

Revocation of prohibition.

**38.** Such notification may be revoked in like manner by the Governor General in Council, and thereupon emigration to the said Settlements shall again be allowed from a day to be specified in the revocation.

From the day so specified all the provisions of this Act authorizing emigration to the said Settlements shall be revived and have the same effect as if such emigration had not been suspended, except as to acts done, offences committed and proceedings commenced during the time of such suspension.

## X.—Offences.

Making unlawful contract of labour.

**39.** Whoever, except under and in conformity with the provisions of this Act, engages or attempts to engage any Native of India to emigrate,

or whoever engages, or attempts to engage, any Native of India to enter into any such contract as is hereby declared illegal,

Recruiting without being licensed.

or, not being a recruiter duly licensed under this Act, acts or is employed as a recruiter of labourers for the Straits Settlements,

Recruiter omitting to take engaged labourers before Magistrate or Protector.

or, being a recruiter duly licensed under this Act, removes, or attempts to remove, any person whom he engages in any district from such district until the particulars required by section 18 have been duly registered,

shall be punished with imprisonment, which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

Use of force, fraud, &c., to cause a Native to emigrate.

**40.** Whoever, by means of intoxication, violence, fraud or false pretences, causes or induces, or attempts to cause or induce, any Native of India to emigrate or to enter into any contract to emigrate, or into any such contract as is hereby declared illegal, or to proceed to the said Settlements without having entered into any contract, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and any police-officer may for such offence arrest him without warrant.

False representation of Government authority.

**41.** Whoever, without lawful authority, issues any written order to the police to assist himself or any other person to procure labourers to proceed to the said Settlements, or falsely represents that such labourers are required by the Government, or are to be engaged on behalf of the Government, shall be liable to imprisonment for a term not exceeding six months, or to fine not exceeding five hundred rupees, or to both.

Receiving emigrants on board without license or certificate.

**42.** Any Master of a vessel not licensed as provided in section 33 who knowingly receives on board, for conveyance to the said Settlements, any emigrant or person who has entered into a contract hereby declared illegal,

and any Master of a vessel licensed as aforesaid, who knowingly receives any emigrant as aforesaid without having previously obtained a certificate under the said section, or in excess of the number specified in such certificate,

shall be liable for each emigrant or person so received to imprisonment for a term which may extend to three months, or to fine not exceeding two hundred rupees, or to both, and the vessel shall be liable to be forfeited.

Failure to comply with requirements of sections 34 and 36.

**43.** Any Master of a vessel who receives on board such vessel any emigrant for the said Settlements and fails to comply with the requirements of sections 34 and 36, shall be liable to a fine not exceeding two hundred rupees.

Penalty for landing emigrant or dependent at other than specified port.

**44.** Any Master of a vessel landing any emigrant or dependent at any port other than the port of debarkation specified in embarkation-pass and list, unless in case of stress of weather or other unavoidable accident, shall be liable for every emigrant or dependent so landed to a fine not exceeding two hundred rupees, or to imprisonment for a term which may extend to one month, or to both.

Taking on board, after clearance, emigrants not entered in list.

**45.** Any Master of a vessel who, having cleared such vessel for the said Settlements, takes on board any emigrant not entered in the list mentioned in section 36, shall be liable to a fine not exceeding two hundred rupees for every emigrant so taken on board.

Prosecutions under Act by whom instituted.

**46.** All prosecutions under sections 42, 43, 44 and 45 shall be instituted by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government.

Customs officers may search and detain for purposes of Act.

**47.** All the powers vested by law in the officers of Customs in regard to the searching and detention of vessels, or otherwise, for the prevention of smuggling on board thereof, may be exercised by such officers for the prevention and detection of the illegal embarkation of emigrants on board

vessels bound for the said Settlements and of other offences against this Act.

## XI.—Miscellaneous.

Act not to apply to certain vessels,

**48.** Nothing in this Act shall apply to any vessels in the service of the Lords Commissioners of the Admiralty, or to any of Her Majesty's vessels.

or to contracts with Native seamen and menial servants.

**49.** Nothing in this Act shall apply to any contract with, or the emigration of, any Native seaman or other person who of his own free will contracts to navigate or serve on board of any vessel, or who embarks on board such vessel in pursuance of such contract, or any person who contracts to serve as a menial servant only and who embarks as such menial servant.

Emigration Agent and his subordinates and Protector of Emigrants to be deemed public servants.

**50.** The Emigration Agent and all persons employed by him, and the Protector of Emigrants, shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860.

Indian Emigration Act, 1871, not to apply to Straits Settlements.

**51.** The Indian Emigration Act, 1871,[a] shall not apply to the Straits Settlements unless and until the Governor General in Council, by notification in the *Gazette of India*, declares it so to apply. VII of 1871.

Repeal of Act XIV of 1872.

**52.** Act No. XIV of 1872[b] (*to exempt the Straits Settlements from the Indian Emigration Act, 1871*) is hereby repealed. XIV of 1872.

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## THE FIRST SCHEDULE.

(*See section 12.*)

Office of the Protector of Emigrants at the Port of .

*A. B.* described in the Roll annexed is hereby licensed under the Straits Settlements Emigration Act, 1877, to be a recruiter of labourers.

[*Here set out the local limits within which the recruiter is licensed to act.*]

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[a] Will be repealed when the Emigration Act, 1883, is declared to come into force,—see Act XXI of 1883, sections 3 and 4.

[b] Will be repealed throughout British India when the Emigration Act, 1883, is declared to come into force,—see Act XXI of 1883, sections 3 and 4.

This license will be in force until the day of , unless previously cancelled.

(Sd.) *C. D.,*
*Protector of Emigrants.*

*Dated the day of*

*Descriptive Roll.*

| Name. | Father's name. | Age. | | Caste. | Colour. | Height | | Distinguishing marks. | Name of village and district to which he belongs. |
|---|---|---|---|---|---|---|---|---|---|
| | | Years. | Months. | | | Feet. | Inches. | | |
| | | | | | | | | | |

## THE SECOND SCHEDULE.

(*See section 17.*)

I HEREBY certify that I have this day examined *A. B.*, and that he is, to the best of my belief and judgment, in a fit state of health, and able, in point of physical condition, to proceed to the Straits Settlements [and to work there[a]].

(Sd.) *C. D.,*
(*Here add designation of examining officer.*)

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## ACT No. XI OF 1877.

*Received the Governor General's assent on the 31st May, 1877.*

## An Act to facilitate the admission of Military Lunatics into Asylums.

WHEREAS it is expedient to facilitate the admission of European Military Lunatics into Asylums, and to amend the law now in force with regard to the Preamble.

[a] These words to be omitted in case of women and children not engaging for labour.

admission thereto of Native Military Lunatics; It is hereby enacted as follows:—

Short title. 1. This Act may be called the "Military Lunatics Act, 1877":

Local extent. It extends to the whole of British India[a] and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty;

Commencement. And it shall come into force on the passing thereof.

Repeal of Act XXI of 1872. 2. Act XXI of 1872 (*to facilitate the admission of Native Military Lunatics into Asylums*) shall be repealed. XXI of 1872.

Procedure in respect of European officer or soldier declared lunatic. 3. Whenever any European officer, Warrant-officer, Non-commissioned officer, soldier or other person subject to the provisions of the Act[b] for punishing Mutiny and Desertion and for the better payment of the Army and their quarters, for the time being in force, has been declared a lunatic in accordance with the provisions of the military regulations of the Presidency to which he belongs, and has been ordered to be forwarded to any one of the Presidency-towns, and it appears to one of the Surgeons General, either of the British Forces or of the Indian Medical Service, according to the Presidency and the service to which the said lunatic belongs, that it is inexpedient that he should be removed to England, or that he should be detained in military custody until he can be conveniently sent to England, such Surgeon General may, if he think fit, make an order under his hand for the reception of the said lunatic into the Lunatic Asylum at Bhowanipur, Madras or Bombay, or such other Lunatic Asylum as may be duly authorized for the purpose by the Governor General in Council; 44 & 45 Vic., cap. 58.

and the officer in charge of such asylum shall receive the lunatic in the asylum, and detain him therein until he is discharged therefrom, in accordance with the local military regulations in force for the time being, or until the Surgeon General applies for his transfer to the military authorities in view to his removal to England.

Report in case of Native officer or soldier appearing to be insane. 4. Whenever any Native officer, Non-commissioned officer or soldier appears to be insane, the officer commanding the regiment or detachment to which he belongs shall report the case to the general officer commanding the division or district or force in which such regiment or detachment is serving.

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[a] The Act has been declared under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpúr Division, namely:—

The districts of Hazáríbágh, Lohárdaga and Mánbhum, and pargana Dhálbhúm and the Kolhan in the district of Singhbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, p. 504.

[b] See now the Army Act, 1881 (44 & 45 Vic., cap. 58), as amended by subsequent Annual Army Acts, 1882, 1883 and 1884 (45 Vic., cap. 7; 46 Vic., cap. 6; and 47 Vic., cap. 8).

5. Such general officer shall thereupon cause the said Native to be examined by a committee composed of at least two medical officers, or (if this be impracticable) by a regimental committee comprising the officer in command of the wing or squadron to which the Native belongs, and the medical officer in charge of the corps or detachment of which such wing or squadron forms part. Examination of Native by committee.

6. If the said committee or regimental committee (as the case may be) are satisfied that the Native is insane, the officer commanding the division or district or force may, if he thinks fit, make an order under his hand for the reception of the said Native into a Lunatic Asylum, and shall then send him thither, under military escort; and the officer in charge of such asylum shall receive the Native into the asylum and detain him therein until he is discharged therefrom in accordance with the local military regulations in force for the time being. Procedure on Native being found by committee to be insane.

7. Whenever it appears to the officer in charge of a Lunatic Asylum that the discharge of a military lunatic, whether European or Native, is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the general officer commanding the division, district or force, or other officer authorized to order the admission of military lunatics into asylums, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the local military regulations in force for the time being. Procedure for discharge of European or Native military lunatic.

8. The Paymaster of the military circle within which any such asylum is situate shall pay to the officer in charge of such asylum the expense of the lodging, maintenance, clothing and medicine of every lunatic, whether European or Native, received and detained under this Act. Payment of expenses of lunatic.

9. All military lunatics heretofore received into Lunatic Asylums shall be deemed to have been so received in accordance with law. Legalization of past receptions in asylums.

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# THE INDIAN LIMITATION ACT, 1877.

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## ACT No. XV OF 1877.

*Received the Governor General's assent on the 19th July, 1877.*

### An Act for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:— Preamble.

## PART I.

PRELIMINARY.

1. This Act may be called "The Indian Limitation Act, 1877": Short title.

Extent of Act.

It extends to the whole of British India;[a] but nothing contained in sections 2 and 3 or in Parts II and III applies—

(*a*) to suits under the Indian Divorce Act, or IV of 1869.

(*b*) to suits under Madras Regulation VI of 1831; Mad. Reg. VI of 1831.

Commencement.

and it shall come into force on the first day of October, 1877.

Repeal of Acts.

2. On and from that day, the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

References to Act IX of 1871.

But all references to the Indian Limitation Act, 1871,[b] shall be read as if IX of 1871. made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25. IX of 1872.

Saving of titles already acquired.

Saving of Act IX of 1872, s. 25.

Suits for which period prescribed by this Act is shorter than that prescribed by Act IX of 1871.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October, 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871,[b] shall have expired before IX of 1871. the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871,[b] may be brought within IX of 1871. two years next after the said first day of October, 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

'Plaintiff.' 'Applicant.' 'Defendant.'

'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue; 'applicant' includes also any person from or through whom an applicant derives his right to apply; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued:

'Easement.'

[c]'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another:[c]

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpúr Division, namely:—

The Districts of Hazáríbágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhum,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[b] Repealed by this Act,—see First Schedule.

[c-c] Repealed in Madras, the Central Provinces and Coorg by the Indian Easements Act, 1882,—see Act V of 1882, section 3.

'bill of exchange' includes also a hundí and a cheque: 'Bill of exchange.'

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligations[a] shall be void if a specified act is performed, or is not performed, as the case may be: 'Bond.'

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight: 'Promissory note.'

'trustee' does not include a benámídár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title: 'Trustee.'

'suit' does not include an appeal or an application: 'Suit.'

'registered' means duly registered in British India under the law[b] for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context: 'Registered.'

'foreign country' means any country other than British India: 'Foreign country.'

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention. 'Good faith.'

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# PART II.

## Limitation of Suits, Appeals and Applications.

**4.** Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented and application made after the period of limitation prescribed therefor by the second schedule hereto annexed shall be dismissed, although limitation has not been set up as a defence. Dismissal of suits, &c., instituted, &c after period of limitation.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

*Illustrations.*

(*a*) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate Court must dismiss the suit.

(*b*) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

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[a] *Sic.* Read "obligation." [b] See Act III of 1877.

Proviso where Court is closed when period expires.

**5.** If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens.

Proviso as to appeals and applications for review.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Special and local laws of limitation.

**6.** When, by any special or local law [a] now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Legal disability.

**7.** If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Double and successive disabilities.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

Disability of representative.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

*Illustrations.*

(*a*) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

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[a] See lists of some of these laws on pages 102 and 119.

(*b*) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(*c*) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(*d*) A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(*e*) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(*f*) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Disability of one joint creditor.

**8.** When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

*Illustrations.*

(*a*) A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(*b*) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Continuous running of time.

**9.** When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and their representatives.

**10.** Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time.

Suits on foreign contracts.

**11.** Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign limitation law.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

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# PART III.

## Computation of Period of Limitation.

Exclusion of day on which right to sue accrues.

**12.** In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion in case of appeals and certain applications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

**13.** In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

Exclusion of time of proceeding *bonâ fide* in Court without jurisdiction.

**14.** In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which,

from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Like exclusion in case of order under Civil Procedure Code, s. 20.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure,[a] section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

XIV of 1882.

Like exclusion in case of application.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction or other cause of a like nature, is unable to grant it.

EXPLANATION 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

EXPLANATION 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

Exclusion of time during which commencement of suit is stayed by injunction or order.

**15.** In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

**16.** In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

Effect of death before right to sue accrues.

**17.** When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal

[a] See Act XIV of 1882, section 3.

representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

Effect of fraud.

**18.** When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

**19.** If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

EXPLANATION 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

EXPLANATION 2.—In this section "signed" means signed either personally or by an agent[a] duly authorized in this behalf.

Effect of

**20.** When interest on a debt or legacy is, before the expiration of the pre-

[a] See 19 & 20 Vic., cap. 97, section 13.

scribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

payment of interest as such.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part payment of principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

**21.** Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

**22.** When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Effect of substituting or adding new plaintiff or defendant.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff:

Proviso where original plaintiff dies.

Provided also that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Proviso where original defendant dies.

**23.** In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

**24.** In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

*Illustrations.*

(*a*) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(*b*) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

Computation of time mentioned in instruments.

**25.** All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

*Illustrations.*

(*a*) A Hindú makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(*b*) A Hindú makes a bond, bearing a Native date only, for the repayment of money within one year The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

# PART IV.

## Acquisition of Ownership by Possession.

Acquisition of right to easements.

**26.** [a] Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one

[a] Repealed in Madras, the Central Provinces and Coorg by the Indian Easements Act, 1882,—see Act V of 1882, section 3.

year after the claimant has notice thereof and of the person making or authorizing the same to be made.[a]

*Illustrations.*

(*a*) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1860, to 1st January, 1880. The plaintiff is entitled to judgment.

(*b*) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

[b] **27.** Provided that, when any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.[c]

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindú widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property.

**28.** At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.[d]

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[a] See 2 & 3 Wm. IV, cap. 71, sections 2, 3 & 4.

Repealed in Madras, the Central Provinces and Coorg by the Indian Easements Act, 1882,—see Act V of 1882, section 3.

[c] See 2 & 3 Wm. IV, cap. 71, section 8.

[d] See 3 & 4 Wm. IV, cap. 27, section 34.

## THE FIRST SCHEDULE.

(*See section 2.*)

| Number and year of Acts. | Title. | Extent of repeal. |
|---|---|---|
| X of 1865 . . . | The Indian Succession Act | In section 321, the words "within two years after the death of the testator, or one year after the legacy has been paid." |
| IX of 1871 . . . | The Indian Limitation Act, 1871. | The whole. |
| X of 1877 . . . | The Code of Civil Procedure. | Section 599, and in section 601 the words "within thirty days from the date of the order." |

## THE SECOND SCHEDULE.

(*See section 4.*)

FIRST DIVISION: SUITS.[a]

| Description of Suit. | Period of Limitation. | Time from which period begins to run. | |
|---|---|---|---|
| | *Part I.—Thirty days.* | | |
| 1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste-lands.*) | Thirty days ... | When notice of the award is delivered to the plaintiff. | XXIII of 1863. |
| | *Part II.—Ninety days.* | | |
| 2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India. | Ninety days ... | When the act or omission takes place. | |
| | *Part III.—Six months.* | | |
| 3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property. | Six months .. | When the dispossession occurs. | I of 1877. |

[a] For special provisions regarding suits—
under the Dekkhan Agriculturists' Relief Act, see Act XXIII of 1881, section 17, and Act XXII of 1882, section 19;
for recovery of revenue in the Central Provinces, see Act XVIII of 1881, section 118;
to recover possession of land in the Central Provinces, see Act IX of 1883, section 81;
in the Tarái, see Regulation IV of 1876, section 3.
These provisions are saved by section 6 of this Act (see *supra*, page 94).

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

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| | Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|---|
| | | *Part III.—Six months*—contd. | |
| IX of 1860. | 4.—Under Act No. IX of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers*), section 1. | Six months ... | When the wages, hire or price of work claimed accrue or accrues due. |
| XIV of 1882. | 5.—Under the Code of Civil Procedure, Chapter XXXIX[a] (*Of summary procedure on negotiable instruments*). | Ditto ... | When the instrument sued upon becomes due and payable. |
| | | *Part IV.—One year.* | |
| | 6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture. | One year ... | When the penalty or forfeiture is incurred. |
| | 7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, No. 4. | Ditto ... | When the wages accrue due. |
| | 8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house. | Ditto ... | When the food or drink is delivered. |
| | 9.—For the price of lodging ... | Ditto ... | When the price becomes payable. |
| | 10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract. | Ditto ... | When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered. |
| XIV of 1882. | 11.—By a person against whom an order is passed under sections 280, 281, 282 or 335 of the Code of Civil Procedure,[a] to establish his right to, or to the present possession of, the property comprised in the order. | Ditto ... | The date of the order. |

[a] See Act XIV of 1882, section 3.

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part IV.—One year*—contd. | |
| 12.—To set aside any of the following sales:—<br>(*a*) sale in execution of a decree of a Civil Court;<br>(*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue,<br>(*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears;<br>(*d*) sale of a patni taluq sold for current arrears of rent.<br>*Explanation.*—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent. | One year ... | When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought. |
| 13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit. | Ditto ... | The date of the final decision or order in the case by a Court competent to determine it finally. |
| 14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for. | Ditto ... | The date of the act or order. |
| 15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the Revenue-authorities for arrears of Government revenue. | Ditto ... | When the attachment, lease or transfer is made. |
| 16.—Against Government to recover money paid under protest in satisfaction of a claim made by the Revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears. | Ditto .. | When the payment is made. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part IV—One year*—contd. | |
| 17.—Against Government for compensation for land acquired for public purposes.[a] | One year ... | The date of determining the amount of the compensation. |
| 18.—Like suit for compensation when the acquisition is not completed. | Ditto ... | The date of the refusal to complete. |
| 19.—For compensation for false imprisonment. | Ditto ... | When the imprisonment ends. |
| 20.—By executors, administrators or representatives under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and be sued for certain wrongs*). | Ditto | The date of the death of the person wronged. |
| 21.—By executors, administrators or representatives under Act No. XIII of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*). | Ditto ... | The date of the death of the person killed. |
| 22.—For compensation for any other injury to the person. | Ditto ... | When the injury is committed. |
| 23.—For compensation for a malicious prosecution. | Ditto ... | When the plaintiff is acquitted, or the prosecution is otherwise terminated. |
| 24.—For compensation for libel... | Ditto ... | When the libel is published. |
| 25.—For compensation for slander. | Ditto ... | When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results. |
| 26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter. | Ditto ... | When the loss occurs. |

XII of 1855.

XIII of 1855.

[a] See Act X of 1870.

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part IV.—One year*—concld. | |
| 27.—For compensation for inducing a person to break a contract with the plaintiff. | One year ... | The date of the breach. |
| 28.—For compensation for an illegal, irregular or excessive distress. | Ditto ... | The date of the distress. |
| 29.—For compensation for wrongful seizure of moveable property under legal process. | Ditto ... | The date of the seizure. |
| | *Part V.—Two years.* | |
| 30.—Against a carrier for compensation for losing or injuring goods. | Two years ... | When the loss or injury occurs. |
| 31.—Against a carrier for compensation for delay in delivering goods. | Ditto ... | When the goods ought to be delivered. |
| 32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes. | Ditto ... | When the perversion first becomes known to the person injured thereby. |
| 33.—Under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and to be sued for certain wrongs*) against an executor, administrator or other representative. | Ditto ... | When the wrong complained of is done. XII of 1855. |
| 34.—For the recovery of a wife ... | Ditto ... | When possession is demanded and refused. |
| 35.—For the restitution of conjugal rights. | Ditto ... | When restitution is demanded and is refused by the husband or wife, being of full age and sound mind. |
| 36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for. | Ditto ... | When the malfeasance, misfeasance or nonfeasance takes place. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years.* | |
| 37.—For compensation for obstructing a way or a watercourse. | Three years ... | The date of the obstruction. |
| 38.—For compensation for diverting a watercourse. | Ditto ... | The date of the diversion. |
| 39.—For compensation for trespass upon immoveable property. | Ditto ... | The date of the trespass. |
| 40.—For compensation for infringing copyright or any other exclusive privilege. | Ditto ... | The date of the infringement. |
| 41.—To restrain waste ... | Ditto ... | When the waste begins. |
| 42.—For compensation for injury caused by an injunction wrongfully obtained. | Ditto ... | When the injunction ceases. |
| 43.—Under the Indian Succession Act, 1865, section 320 or 321,[a] or under the Probate and Administration Act, 1881, section 139 or 140,[a] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets. | Ditto ... | The date of the payment or distribution. |
| 44.—By a ward who has attained majority, to set aside a sale by his guardian. | Ditto ... | When the ward attains majority. |
| 45.—To contest an award under any of the following Regulations of the Bengal Code:— VII of 1822, IX of 1825, and IX of 1833. | Ditto ... | The date of the final award or order in the case. |
| 46.—By a party bound by such award to recover any property comprised therein. | Ditto ... | The date of the final award or order in the case. |

X of 1865.

V of 1881.

Ben. Reg. VII of 1822.
Ben. Reg. IX of 1825.
Ben. Reg. IX of 1833.

[a, b] These words were inserted by Act V of 1881, section 156.

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION : SUITS—*continued.*

| Description of Suit | Period of Limitation. | Time from which period begins to run | |
|---|---|---|---|
| | *Part VI.—Three years*—contd. | | |
| 47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XII,[a] or the Bombay Mámlatdárs Courts Act, or by any one claiming under such person, to recover the property comprised in such order. | Three years ... | The date of the final order in the case. | X of 1882<br>Bom III of 1876. |
| 48.—For specific moveable property lost, or acquired by theft or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same. | Ditto . | When the person having the right to the possession of the property first learns in whose possession it is. | |
| 49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same. | Ditto ... | When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. | |
| 50.—For the hire of animals, vehicles, boats or household furniture. | Ditto ... | When the hire becomes payable. | |
| 51.—For the balance of money advanced in payment of goods to be delivered. | Ditto ... | When the goods ought to be delivered. | |
| 52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon. | Ditto ... | The date of the delivery of the goods. | |
| 53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | Ditto ... | When the period of credit expires. | |
| 54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. | Ditto ... | When the period of the proposed bill elapses. | |

[a] See Act X of 1882, section 3.

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 55.—For the price of trees or growing crops sold by the plaintiff to the defendant, where no fixed period of credit is agreed upon. | Three years .. | The date of the sale. |
| 56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. | Ditto ... | When the work is done. |
| 57.—For money payable for money lent. | Ditto ... | When the loan is made. |
| 58.—Like suit when the lender has given a cheque for the money. | Ditto ... | When the cheque is paid. |
| 59.—For money lent under an agreement that it shall be payable on demand. | Ditto ... | When the loan is made. |
| 60.—For money deposited under an agreement that it shall be payable on demand. | Ditto .. | When the demand is made. |
| 61.—For money payable to the plaintiff for money paid for the defendant. | Ditto ... | When the money is paid. |
| 62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. | Ditto ... | When the money is received. |
| 63.—For money payable for interest upon money due from the defendant to the plaintiff. | Ditto ... | When the interest becomes due. |
| 64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. | Ditto ... | When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. | Three years ... | When the time specified arrives or the contingency happens. |
| 66.—On a single bond, where a day is specified for payment. | Ditto ... | The day so specified. |
| 67.—On a single bond, where no such day is specified. | Ditto ... | The date of executing the bond. |
| 68.—On a bond subject to a condition. | Ditto ... | When the condition is broken. |
| 69.—On a bill of exchange or promissory note payable at a fixed time after date. | Ditto .. | When the bill or note falls due. |
| 70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time. | Ditto ... | When the bill is presented. |
| 71.—On a bill of exchange accepted payable at a particular place. | Ditto ... | When the bill is presented at that place. |
| 72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand. | Ditto ... | When the fixed time expires. |
| 73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. | Ditto ... | The date of the bill or note. |
| 74.—On a promissory note or bond payable by instalments. | Ditto ... | The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment. |
| 75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due. | Ditto ... | When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. | Three years ... | The date of the delivery to the payee. |
| 77.—On a dishonoured foreign bill where protest has been made and notice given. | Ditto ... | When the notice is given. |
| 78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance. | Ditto .. | The date of the refusal to accept. |
| 79.—By the acceptor of an accommodation-bill against the drawer. | Ditto ... | When the acceptor pays the amount of the bill. |
| 80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for. | Ditto ... | When the bill, note or bond becomes payable. |
| 81.—By a surety against the principal debtor. | Ditto ... | When the surety pays the creditor. |
| 82.—By a surety against a co-surety. | Ditto ... | When the surety pays anything in excess of his own share. |
| 83.—Upon any other contract to indemnify. | Ditto ... | When the plaintiff is actually damnified. |
| 84.—By an attorney or vakíl for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid. | Ditto ... | The date of the termination of the suit or business, or (where the attorney or vakíl properly discontinues the suit or business) the date of such discontinuance. |
| 85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | Ditto ... | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 86.—On a policy of insurance when the sum assured is payable immed[illegible]ly after proof of the death or loss has been given [illegible] or received by the insurers. | Three years ... | When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person. |
| 87.—By the assured to recover premia paid under a policy voidable at the election of the insurers. | Ditto .. | When the insurers elect to avoid the policy. |
| 88.—Against a factor for an account. | Ditto ... | When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. |
| 89.—By a principal against his agent for moveable property received by the latter and not accounted for. | Ditto ... | When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. |
| 90.—Other suits by principals against agents for neglect or misconduct. | Ditto ... | When the neglect or misconduct becomes known to the plaintiff. |
| 91.—To cancel or set aside an instrument not otherwise provided for. | Ditto ... | When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. |
| 92.—To declare the forgery of an instrument issued or registered. | Ditto .. | When the issue or registration becomes known to the plaintiff. |
| 93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff. | Ditto ... | The date of the attempt. |
| 94.—For property which the plaintiff has conveyed while insane. | Ditto ... | When the plaintiff is restored to sanity, and has knowledge of the conveyance. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud. | Three years ... | When the fraud becomes known to the party wronged. |
| 96.—For relief on the ground of mistake. | Ditto ... | When the mistake becomes known to the plaintiff. |
| 97.—For money paid upon an existing consideration which afterwards fails. | Ditto ... | The date of the failure. |
| 98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust. | Ditto ... | The date of the trustee's death, or, if the loss has not then resulted, the date of the loss. |
| 99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers. | Ditto ... | The date of the plaintiff's advance in excess of his own share. |
| 100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution. | Ditto ... | When the right to contribution accrues. |
| 101.—For a seaman's wages. | Ditto ... | The end of the voyage during which the wages are earned. |
| 102.—For wages not otherwise expressly provided for by this schedule. | Ditto ... | When the wages accrue due. |
| 103.—By a Muhammadan for exigible dower (*mu'ajjal*). | Ditto ... | When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce. |
| 104.—By a Muhammadan for deferred dower (*mu'wajjal*). | Ditto ... | When the marriage is dissolved by death or divorce. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—contd. | |
| 105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee. | Three years ... | When the mortgagor re-enters on the mortgaged property. |
| 106.—For an account and a share of the profits of a dissolved partnership. | Ditto ... | The date of the dissolution. |
| 107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate. | Ditto ... | The date of the payment. |
| 108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease. | Ditto ... | When the trees are cut down. |
| 109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant. | Ditto ... | When the profits are received or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession. |
| 110.—For arrears of rent ... | Ditto ... | When the arrears become due. |
| 111.—By a vendor of immoveable property, to enforce his lien for unpaid purchase-money. | Ditto ... | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |
| 112.—For a call by a company registered under any Statute or Act. | Ditto ... | When the call is payable. |
| 113.—For specific performance of a contract. | Ditto ... | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |
| 114.—For the rescission of a contract. | Ditto ... | When the facts entitling the plaintiff to have the contract rescinded first become known to him. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VI.—Three years*—concld. | |
| 115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for. | Three years ... | When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases. |
| | *Part VII.—Six years.* | |
| 116.—For compensation for the breach of a contract in writing registered. | Six years ... | When the period of limitation would begin to run against a suit brought on a similar contract not registered. |
| 117.—Upon a foreign judgment as defined in the Code of Civil Procedure.[a] | Ditto .. | The date of the judgment. |
| 118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place. | Ditto ... | When the alleged adoption becomes known to the plaintiff. |
| 119.—To obtain a declaration that an adoption is valid. | Ditto ... | When the rights of the adopted son as such are interfered with. |
| 120.—Suit for which no period of limitation is provided elsewhere in this schedule. | Ditto ... | When the right to sue accrues. |
| | *Part VIII.—Twelve years.* | |
| 121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a *patní taluq* or other saleable tenure sold for arrears of rent. | Twelve years ... | When the sale becomes final and conclusive. |
| 122.—Upon a judgment obtained in British India, or a recognizance. | Ditto ... | The date of the judgment or recognizance. |
| 123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate. | Ditto ... | When the legacy or share becomes payable or deliverable. |

[a] See Act XIV of 1882, section 3.

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years*—contd. | |
| 124.—For possession of an hereditary office. | Twelve years ... | When the defendant takes possession of the office adversely to the plaintiff.<br><br>*Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed. |
| 125.—Suit during the life of a Hindú or Muhammadan female by a Hindú or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage. | Ditto ... | The date of the alienation. |
| 126.—By a Hindú governed by the law of the Mitákshará, to set aside his father's alienation of ancestral property. | Ditto ... | When the alienee takes possession of the property. |
| 127.—By a person excluded from joint-family property, to enforce a right to share therein. | Ditto ... | When the exclusion becomes known to the plaintiff. |
| 128.—By a Hindú for arrears of maintenance. | Ditto ... | When the arrears are payable. |
| 129.—By a Hindú for a declaration of his right to maintenance. | Ditto ... | When the right is denied. |
| 130.—For the resumption or assessment of rent-free land. | Ditto ... | When the right to resume or assess the land first accrues. |
| 131.—To establish a periodically recurring right. | Ditto ... | When the plaintiff is first refused the enjoyment of the right. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION : SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years*—contd. | |
| 132.—To enforce payment of money charged upon immoveable property. | Twelve years ... | When the money sued for becomes due. |
| *Explanation.*—The allowance and fees respectively called *málikána* and *haqqs* shall, for the purpose of this clause, be deemed to be money charged upon immoveable property. | | |
| 133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration. | Ditto ... | The date of the purchase. |
| 134.—To recover possession of immoveable property conveyed or bequeathed in trust, or mortgaged, and afterwards purchased from the trustee or mortgagee for a valuable consideration. | Ditto ... | Ditto. |
| 135.—Suit instituted in a Court not established by Royal Charter, by a mortgagee, for possession of immoveable property mortgaged. | Ditto ... | When the mortgagor's right to possession determines. |
| 136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale. | Ditto ... | When the vendor is first entitled to possession. |
| 137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale. | Ditto ... | When the judgment-debtor is first entitled to possession. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*continued.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years*—concld. | |
| 138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale. | Twelve years ... | The date of the sale. |
| 139.—By a landlord to recover possession from a tenant. | Ditto ... | When the tenancy is determined. |
| 140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property. | Ditto ... | When his estate falls into possession. |
| 141.—Like suit by a Hindú or Muhammadan entitled to the possession of immoveable property on the death of a Hindú or Muhammadan female. | Ditto . | When the female dies. |
| 142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. | Ditto ... | The date of the dispossession or discontinuance. |
| 143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition. | Ditto ... | When the forfeiture is incurred or the condition is broken. |
| 144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for. | Ditto ... | When the possession of the defendant becomes adverse to the plaintiff. |
| | *Part IX.—Thirty years.* | |
| 145.—Against a depository or pawnee to recover moveable property deposited or pawned. | Thirty years ... | The date of the deposit or pawn. |

## THE SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—*concluded.*

| Description of Suit. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | *Part IX.—Thirty years.*—concld. | |
| 146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, by a mortgagee, to recover from the mortgagor the possession of immoveable property mortgaged. | Thirty years ... | When any part of the principal or interest was last paid on account of the mortgage-debt. |
| | *Part X.—Sixty years.* | |
| 147.—By a mortgagee for foreclosure or sale. | Sixty years ... | When the money secured by the mortgage becomes due. |
| 148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged. | Ditto ... | When the right to redeem or to recover possession accrues:<br>Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that Province immediately before the same day. |
| 149.—Any suit by or on behalf of the Secretary of State for India in Council. | Ditto ... | When the period of limitation would begin to run under this Act against a like suit by a private person. |

### SECOND DIVISION: APPEALS.[a]

| Description of Appeal. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 150.—Under the Code of Criminal Procedure[b] from a sentence of death passed by a Sessions Judge. | Seven days ... | The date of the sentence. |

X of 1882.

[a] For special provisions regarding appeals—
in the Panjáb,—see Act XVII of 1877, section 40.
under the British Burma Boundaries Act,—see Act V of 1880, section 20.
under Táj Mahál's Pension Act,—see Act I of 1881, section 6.
under the Central Provinces Land-revenue Act,—see Act XVIII of 1881, section 23.
in the Taráí,—see Regulation IV of 1876, section 42.
under the Ajmer Courts Regulation,—see Regulation I of 1877, section 22.
under the Ajmer Land and Revenue Regulation,—see Regulation II of 1877, section 116.
under the Assam Local Rates Regulation,—see Regulation III of 1879, section 9.
These provisions are saved by section 6 of this Act (see *supra*, page 94)

[b] See Act X of 1882, section 3.

## THE SECOND SCHEDULE—*continued.*

### SECOND DIVISION: APPEALS—*concluded.*

| Description of Appeal. | Period of Limitation. | Time from which period begins to run. | |
|---|---|---|---|
| 151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay [a] [a] or the Chief Court of the Panjáb [a] in the exercise of its original jurisdiction. | Twenty days ... | The date of the decree or order. | |
| 152.—Under the Code of Civil Procedure,[b] to the Court of a District Judge. | Thirty days ... | The date of the decree or order appealed against. | XIV of 1882. |
| 153.—Under the same Code, section 601, to a High Court. | Ditto ... | The date of the order refusing the certificate. | XIV of 1882. |
| 154.—Under the Code of Criminal Procedure,[c] to any Court other than a High Court. | Ditto ... | The date of the sentence or order appealed against. | X of 1882. |
| 155.—Under the same Code, to a High Court,[d] except in the cases provided for by No. 150 and No. 157. | Sixty days ... | Ditto. | X of 1882. |
| 156.—Under the Code of Civil Procedure,[e, f] to a High Court, except in the cases provided for by No. 151 and No. 153. | Ninety days ... | The date of the decree or order appealed against. | XIV of 1882. |
| 157.—Under the Code of Criminal Procedure,[g] from a judgment of acquittal. | Six months ... | The date of the judgment appealed against. | X of 1882. |

### THIRD DIVISION: APPLICATIONS.[h, i]

| Description of Application. | Period of Limitation. | Time from which period begins to run. | |
|---|---|---|---|
| 158.—Under the Code of Civil Procedure,[j] to set aside an award. | Ten days ... | When the award is submitted to the Court. | XIV of 1882. |

a-a See Act XVII of 1877, section 18.
b, e, j See Act XIV of 1882, section 3.
c, g See Act X of 1882, section 3.
d, h See the Burma Courts Act, XVII of 1875, sections 37 and 83.
f See the same Act, sections 37, 65, 83 and 85.
i Nothing in this Act shall bar the right to make an application under the North-Western Provinces Rent Act, 1881, to assess to rent land held rent-free—see Act XII of 1881, section 30, clauses (*e*) and (*f*); or the right of a málguzár in the Central Provinces to demand revenue of land assessed to revenue and held free—see Act XVIII of 1881, section 117.

## THE SECOND SCHEDULE—*continued.*

### THIRD DIVISION: APPLICATIONS—*continued.*

| | Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|---|
| | 159.—For leave to appear and defend a suit under Chapter XXXIX of the Code of Civil Procedure.[a] | Ten days .. | When the summons is served. |
| XIV of 1882. | | | |
| | 160.—For an order under section 629 of the same Code, restoring to the file a rejected application for review. | Fifteen days .. | When the application for review is rejected. |
| XIV of 1882. | | | |
| | [b] 161.—For the issue of a notice under section 258 of the same Code, to show cause why the payment or adjustment therein mentioned should not be recorded as certified. | Twenty days .. | When the payment or adjustment is made. |
| XIV of 1882. | | | |
| | 162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay[c] or the Chief Court of the Panjáb[c] in the exercise of its original jurisdiction. | Ditto .. | The date of the decree or order. |
| | 163.—By a plaintiff, for an order to set aside a dismissal by default. | Thirty days .. | The date of the dismissal. |
| | 164.—By a defendant, from an order to set aside a judgment *ex parte*. | Ditto ... | The date of executing any process for enforcing the judgment. |
| | 165.—Under the Code of Civil Procedure,[d] by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession. | Ditto .. | The date of the dispossession. |
| XIV of 1882. | | | |

[a, d] See Act XIV of 1882, section 3.
[b] See Act XII of 1879, section 10.
[c-c] See Act XVII of 1877, section 18.

## THE SECOND SCHEDULE—*continued.*

### THIRD DIVISION: APPLICATIONS—*continued.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. | |
|---|---|---|---|
| 166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale,[a] or on the ground that the decree-holder has purchased without the permission of the Court.[a] | Thirty days ... | The date of the sale. | |
| 167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property. | Ditto ... | The date of the resistance, obstruction or dispossession. | |
| 168.—For re-admission of an appeal dismissed for want of prosecution. | Ditto .. | The date of the dismissal. | |
| 169.—For a re-hearing of an appeal heard *ex-parte* in the absence of the respondent. | Ditto ... | The date of the decree in appeal. | |
| 170.—For leave to appeal as a pauper. | Ditto ... | The date of the decree appealed against. | |
| 171.—Under section 363 or 365 of the Code of Civil Procedure,[b] by a person claiming to be the legal representative of a deceased plaintiff[c] or appellant.[c] | Sixty days ... | The date of the plaintiff's[d] or appellant's[d] death. | XIV of 1882. |
| [e]171A.—Under section 366 of the same Code, by the defendant. | Ditto ... | [f]The sixtieth day from[f] the date of the plaintiff's death. | XIV of 1882. |
| [g]171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant. | Ditto ... | The date of the defendant's death. | XIV of 1882. |

[a-a, c-c, d d, e, g] See Act XII of 1879, section 108.
[b] See Act XIV of 1882, section 3.
[f-f] See Act VIII of 1880.

## THE SECOND SCHEDULE—*continued.*

### THIRD DIVISION: APPLICATIONS—*continued.*

| | Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|---|
| XIV of 1882. | [a]171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal. | Sixty days ... | The date of the order for abatement or dismissal. |
| | 172.—By a purchaser at an execution-sale, to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein. | Ditto ... | The date of the sale. |
| | 173.—For a review of judgment, except in the cases provided for by No. 162. | Ninety days ... | The date of the decree or order. |
| XIV of 1882. | 174.—By a creditor of an insolvent judgment-debtor, under section 353 of the Code of Civil Procedure.[b] | Ditto ... | The date of the publication of the schedule. |
| | 175.—For payment of the amount of a decree by instalments. | Six months ... | The date of the decree. |
| XIV of 1882. | 176.—Under the Code of Civil Procedure,[c] section 516 or 525, that an award be filed in Court. | Ditto ... | The date of the award. |
| | 177.—For the admission of an appeal to Her Majesty in Council. | Ditto ... | The date of the decree appealed against. |
| XIV of 1882. | 178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure,[d] section 230. | Three years ... | When the right to apply accrues. |
| XIV of 1882. | 179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure,[e] section 230. | Ditto; or, where a certified copy of the decree or order has been registered, six years. | 1 The date of the decree or order, or<br>2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or |

[a] See Act XII of 1879, section 108.
[b, c, d, e] See Act XIV of 1882, section 3.

## THE SECOND SCHEDULE—*continued.*

### THIRD DIVISION: APPLICATIONS—*continued.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| 179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure,[a] section 230—*contd.* | Three years; or, where a certified copy of the decree or order has been registered, six years—*contd.* | 3 (where there has been a review of judgment) the date of the decision passed on the review, or<br><br>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or<br><br>5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure,[b] section 248, or XIV of 1882.<br><br>6 (where the application is to enforce any payment which the decree or order directs to be made at a[c] certain date) such date.[c]<br><br>*Explanation I.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. |

[a, b] See Act XIV of 1882, section 3.
[c-c] See Act XII of 1879, section 108.

## THE SECOND SCHEDULE—*concluded.*

### THIRD DIVISION : APPLICATIONS—*concluded.*

| Description of Application. | Period of Limitation. | Time from which period begins to run. |
|---|---|---|
| | | *Explanation I.*—contd. |
| 179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, [a] section 230—*concld.* | Three years; or, where a certified copy of the decree or order has been registered, six years—*concld.* | Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all. |
| XIV of 1882. | | *Explanation II.*—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure [b] or otherwise) to execute the decree or order. |
| 180.—To enforce a judgment, decree or order of any Court established by Royal Charter, in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council. | Twelve years ... | When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: |
| | | Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be. |

[a, b] See Act XIV of 1882, section 3.

# THE OPIUM ACT, 1878.

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13. Power to make rules, regarding
    disposal of things confiscated
    and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
    Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. Procedure in case of illegal poppy-cultivation.
23. Recovery of arrears of fees, duties, &c.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

SCHEDULE.

## ACT No. I OF 1878.

*Received the Governor General's assent on the 9th January, 1878.*

## An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Opium Act, 1878": Short title.

It shall extend to such local areas as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct; Local extent.

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.[a] Commencement.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule: Repeal of enactments.

XI of 1849. XXI of 1856. X of 1871. Ben. II of 1876. And in Acts No. XI of 1849, No. XXI of 1856 and No. X of 1871,[b] and in Bengal Act No. II of 1876, the words "intoxicating drugs" (wherever they occur) shall not include opium. Amendment of Acts.

VII of 1836. The reference made to Bombay Regulations XXI of 1827 and XX of 1830 in Act No. VII of 1836 shall be read as if made to the corresponding sections of this Act. Amendment of Act VII of 1836, s. 1.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"Opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy: "Opium."

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[a] Came into force—

in the North-Western Provinces and Oudh, from 2nd February, 1878,—see *Gazette of India*, Part I, 2nd February, 1878, page 68;

in the Bombay Presidency, from 1st April, 1878,—*ibid*, 23rd March, 1878, page 231;

in the Lower Provinces of Bengal from 21st August, 1878,—*ibid*, 17th August, 1878, page 526;

in British Burma from 29th March, 1879,—*ibid*, 25th January, 1879, page 75;

in Assam from 1st April, 1879,—*ibid*, 22nd March, 1879, page 259;

in the Central Provinces from 28th June, 1879,—*ibid*, 28th June, 1879, page 441;

in Ajmer and Merwára from 2nd August, 1879,—*ibid*, 12th July, 1879, page 466;

in the Panjáb from 1st April, 1880,—*ibid*, 3rd January, 1880, page 16;

in the Madras Presidency from 1st July, 1880,—*ibid*, 5th June, 1880, page 513;

in Coorg from 1st April, 1882,—*ibid*, 11th March, 1882, page 185: and

in the Cantonment of Morár from 1st July, 1883,—*ibid*, 30th June, 1883, page 266.

The only places in which the Act has not been declared in force are the Andaman and Nicobar Islands and the Pargana of Mánpur. In these places the former Opium Act, XXIII of 1876 (as amended by Act VI of 1877) is still applicable.

[b] Repealed by Act XXII of 1881.

"Magistrate." "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"Import." "Import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government:

"Export." "Export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government:

"Transport." "Transport" means to remove from one place to another within the territories administered by the same Local Government.

Prohibition of poppy cultivation and possession, &c., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy;

(*b*) manufacture opium;

(*c*) possess opium;

(*d*) transport opium;

(*e*) import or export opium; or

(*f*) sell opium.

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

(*a*) the cultivation of the poppy;

(*b*) the manufacture of opium;

(*c*) the possession of opium;

(*d*) the transport of opium;

(*e*) the importation or exportation of opium; and

(*f*) the sale of opium, and the farm of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs[a] for the time being in force or under section 6.

[a] See Act VIII of 1878, Chapter V.

Duty on opium imported by land.

**6.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

**7.** The Governor General in Council may, by order notified in the *Gazette of India*,—

(*a*) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government; and

(*b*) cancel any such order

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence; and

(*d*) cancel any such declaration.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

**8.** The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, &c.

**9.** Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecution under Section 9.

**10.** In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

**11.** In any case in which an offence under section 9 has been committed—

(*a*) the poppy so cultivated;

(*b*) the opium in respect of which any offence under the same section has been committed;

(*c*) where, in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting;

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

**12.** When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may

give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated and rewards.

**13.** The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

**14.** Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue, superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel or place;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry;

(*c*) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and if he think proper arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium

**15.** Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing which

in open places.

he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;

Power to detain, search and arrest.

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Searches how made.

**16.** All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.[a] X of 1882.

Officers to assist each other.

**17.** The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

**18.** Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall for every such offence be punished with fine not exceeding five hundred rupees.

Issue of warrants.

**19.** The Collector of the District, Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.[b] X of 1882.

Disposal of person arrested or thing seized.

**20.** Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest Police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

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a, b See Act X of 1882, section 3.

Report of arrests and seizures.

**21.** Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy-cultivation.

**22.** In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

XIII of 1857. Provided that, wherever Act No. XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, &c.

**23.** Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

**24.** When any amount is due to a farmer of opium-revenue from his licensee in respect of a license, such farmer may make an application to the Collector of the District, Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, Deputy Collector[a] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

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[a] *Sic.* Read "Deputy Commissioner."

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

**25.** When any person in compliance with any rule made hereunder gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; IX of 1872. and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

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## SCHEDULE.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|---|
| Act XI of 1849 . | Ábkárí Revenue of Calcutta ... | In section 5, the word "opium."<br>In section 6, the word "opium" and the last thirty-one words.<br>In section 15, from and including the words "except in the case" to the end of the section.<br>In section 33, from and including the words "except opium" down to and including the words "each seer;" and the words "or in the case of opium as aforesaid, a reward of one rupee eight annas for each seer." |
| Act III of 1852... | Spirituous Liquors, Bombay ... | Section 10, so far as it relates to opium. |
| Act XXI of 1856 | Bengal Ábkárí Act ... ... | In section 28, the word "opium."<br>Sections 34, 51, 52, 53 and 87.<br>In section 35, the words "or opium."<br>In section 49, the words "except opium."<br>Section 59, so far as it relates to opium.<br>In section 75, the words "except opium," and from and including the words "opium seized" down to the end. |

## SCHEDULE—*continued.*

### ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*concluded.*

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|---|
| Act XXI of 1856 —*contd.* | Bengal Abkárí Act—*contd.* | In section 76, from and including the words "except opium" down to and including the words "each seer;" and from and including the words "or in" down to and including the words "each seer."<br>In paragraph 8 of section 90, the words "and opium." |
| Act XIII of 1857 | Cultivation of the poppy and manufacture of opium. | Section 2. |
| Act X of 1871 ... | The Northern India Excise Act ... | In paragraph 5 of section 3, the word "opium."<br>Sections 18, 65, 66, 67 and 87.<br>In section 19, the words "or opium."<br>Section 46, so far as it relates to opium.<br>In section 46, paragraph 3, from and including the words "as well as" down to and including the words "dealings in opium."<br>In section 63, the words "except opium."<br>In section 78, the words "except opium," and paragraph 2.<br>In section 79, from and including the words "except opium" down to and including the words "each seer;" and from and including the words "or in" down to and including the words "each seer." |
| Act IV of 1872 ... | The Panjáb Laws Act ... | Section 49. |
| Act XXVI of 1872 | Panjáb Opium Law Amendment... | The whole Act. |
| Act VI of 1873... | Transhipment of goods ... | Section 7 |
| Act XVI of 1875 | The Indian Tariff Act ... | Section 9. |
| Act XXIII of 1876. | To amend the law relating to Opium. | The whole Act. |
| Act VI of 1877 .. | For postponing the day on which the Opium Act, 1876, is to come into force. | Ditto. |

## SCHEDULE—*concluded.*

### Act of the Lieutenant-Governor of Bengal in Council.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| Act II of 1876 ... | To amend Act XI of 1849, Act XXI of 1856 and Act IV (B. C.) of 1866. | In section 3, in the section substituted for section 33 of Act XI of 1849, the words "except opium," and from and including the words "confiscated opium" down to and including the words "general order."<br><br>In section 3, in the section substituted for section 34 of Act XI of 1849, the words "except in the case of opium," and from and including the words "and in the case of opium" down to and including the words "similarly distributed."<br><br>In section 10, in the section substituted for section 75 of Act XXI of 1856, the words "except opium," and from and including the words "confiscated opium" down to and including the words "general order."<br><br>In section 10, in the section substituted for section 76 of Act XXI of 1856, the words "except in the case of opium," and from and including the words "and in the case of opium" down to and including the words "similarly distributed." |

### Bombay Regulations.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| Bombay Regulation XXI of 1827. | Duty on opium ... ... | The preamble from and including the words "with the combined" down to and including the words "the prohibited."<br><br>Chapters I, II, III and IV. |
| Bombay Regulation XX of 1830. | Malwa opium ... ... | So much as has not been repealed. |

## ACT No. VI OF 1878.

*Received the Governor General's assent on the 13th February, 1878.*

# An Act to amend the law relating to Treasure-trove.

WHEREAS it is expedient to amend the law relating to treasure-trove; It Preamble.
is hereby enacted as follows:—

### *Preliminary.*

1. This Act may be called "The Indian Treasure-trove Act, 1878": Short title.

It extends to the whole of British India;[a] Extent.

And it shall come into force at once. Commencement

2. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

3. In this Act— Interpretation-clause.

"treasure" means anything of any value hidden in the soil, or in anything affixed thereto: "Treasure."

"Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act. "Collector."

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing. Owner.

### *Procedure on finding Treasure.*

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing— Notice by finder of treasure.

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found;

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáríbágh, Lohárdaga and Mánbhum and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

Notification requiring claimants to appear.

**5.** On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

(*a*) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

**6.** Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Collector.

**7.** On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

**8.** If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

**9.** If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue-authority. Appeal against such declaration.

Subject to such appeal, every such declaration shall be final and conclusive.

**10.** When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided. Proceedings subsequent to declaration.

**11.** When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof. When no other person claims as owner of place, treasure to be given to finder.

**12.** When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) :— When only one such person claims and his claim is not disputed, treasure to be divided,

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be ; or

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months

without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

and shares to be delivered to parties.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

In case of dispute as to ownership of place, proceedings to be stayed.

**13.** When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of such dispute,

**14.** Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division thereupon.

**15.** If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to acquire the treasure on behalf of Government.

**16.** The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Collector final, and no suit to lie against him for acts done *bonâ fide*.

**17.** No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Collector to

**18.** A Collector making any enquiry under this Act may exercise any

XIV of 1882. power conferred by the Code of Civil Procedure[a] on a Civil Court for the trial of suits. exercise powers of Civil Court.

**19.** The Local Government may, from time to time, make rules consistent with this Act to regulate proceedings hereunder. Power to make rules.

Such rules shall, on being published in the local Gazette, have the force of law.

*Penalties.*

**20.** If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty, Penalty on finder failing to give notice, &c.

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**21.** If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty, Penalty on owner abetting offence under section 20.

XLV of 1860.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

## SCHEDULE.

| Number and date of enactments. | Title or subject. | Extent of repeal. |
|---|---|---|
| Bengal Regulation V of 1817. | A Regulation for declaring the rights of Government and of individuals with respect to hidden treasure, and for prescribing the rules to be observed on the discovery of such treasure. | The whole. |
| Madras Regulation XI of 1832. | A Regulation for declaring the rights of Government and of individuals with respect to hidden treasure, and for prescribing the rules to be observed on discovery of such treasure. | The whole. |

[a] See Act XIV of 1882, section 3.

SCHEDULE—*concluded.*

| Number and date of enactments. | Title or subject. | Extent of repeal. |
|---|---|---|
| Act XII of 1838 . | Hidden Treasure (Madras) . . . | The whole. |
| Act IV of 1872 . | An Act for declaring which of certain rules, laws and regulations have the force of law in the Panjáb, and for other purposes. | So far as regards Bengal Regulation V of 1817. |
| Act XV of 1874 . | Laws Local Extent . . . . | The second schedule, so far as regards Madras Regulation XI of 1832 and Act XII of 1838.<br>The fourth schedule, so far as regards Bengal Regulation V of 1817. |
| Act XVII of 1875 . | An Act to consolidate and amend the law relating to the Courts in British Burma, and for other purposes. | So far as regards Bengal Regulation V of 1817. |
| Act XX of 1875 . | An Act to declare and amend the law in force in the Central Provinces. | Ditto. |
| Act XVIII of 1876 . | Oudh Laws Act. | Ditto. |

# THE INDIAN FOREST ACT, 1878.

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## ACT No. VII OF 1878.

*Received the Governor General's assent on the 8th March, 1878.*

# An Act to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber.

Preamble. WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber; It is hereby enacted as follows:—

## CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Forest Act, 1878":

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces,[a] the North-Western Provinces and the Panjáb (except the District of Hazára[b]), and the Chief Commissioners of Oudh, the Central Provinces and Assam. Commencement.

And any other Local Government may, from time to time, with the previous sanction of the Governor General in Council, extend, by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.[c] Extent.

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto annexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder. Repeal of enactments.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"Forest-officer" means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this behalf, may from time to time appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer: "Forest-officer."

"Tree" includes bamboos, stumps and brushwood: "Tree."

"Timber" includes trees and bamboos when they have fallen or have been felled, and all wood, whether cut up, or fashioned or hollowed-out for cart-wheels, mortars, canoes or other purposes or not: "Timber."

"Forest-produce" includes the following when found in, or brought from, a forest, that is to say,— "Forest-produce."

minerals (including limestone and laterite), surface-soil, trees, timber, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, roots, juice,

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[a] The Act has been declared under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutá Nágpur Division, namely:—

the districts of Hazáríbágh, Lohárdaga and Mánbhum, and Pargana Dhálbhúm and the Kolhan in the district of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[b] As to this district, see the Hazára Forest Regulations of 1873, 1874 and 1879.

[c] The Act does not appear to have been extended to any place under this clause. In the Madras Presidency and British Burma there are special Forest Acts—see Madras Act V of 1882 and Act XIX of 1881.

catechu, bark, honey, wax, lac, caoutchouc, gum, wood-oil, grass-oil, resin, varnish, silk-worms and cocoons, shells, skins, tusks, bones and horns :

"Forest-offence." "Forest-offence" means an offence punishable under this Act, or under any rule made under this Act :

"Cattle." "Cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids :

"River." "River" includes streams, canals, creeks and other channels, natural or artificial.

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## CHAPTER II.

### Of Reserved Forests.

Power to reserve forests. **3.** The Local Government may from time to time constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government. **4.** Whenever it is proposed to constitute any land a reserved forest, the Local Government may publish a notification in the local official Gazette—

(*a*) declaring that it is proposed to constitute such land a reserved forest ;

(*b*) specifying the limits of such forest ; and

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this chapter.

Explanation.—For the purpose of clause (*b*) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest-Settlement-officer under this Act.

Bar of accrual of forest-rights.

**5.** During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land.

Proclamation by Forest-Settlement-officer.

**6.** When a notification has been issued under section 4, the Forest-Settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(*a*) specifying the limits of the proposed forest;

(*b*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

Enquiry by Forest-Settlement-officer.

**7.** The Forest-Settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, enquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5 and not claimed under section 6, so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Powers of Forest-Settlement-officer.

**8.** For the purposes of such enquiry, the Forest-Settlement-officer may exercise the following powers, that is to say :—

(*a*) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(*b*) the powers of a Civil Court in the trial of suits.

Extinction of rights.

**9.** Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by enquiry under section 7, shall be extinguished, unless before the notification under section 19 is published the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Power to acquire land over which right is claimed.

**10.** In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a water-course, the Forest-Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

If such claim is admitted in whole or in part, the Forest-Settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his rights; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870. X of 1870.

For the purpose of so acquiring such land—

(*a*) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870; X of 1870.

(*b*) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act; X of 1870.

(*c*) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and X of 1870.

(*d*) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of pasture or to forest-produce.

**11.** In the case of a claim to rights of pasture or to forest-produce, the Forest-Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest-Settlement-officer.

**12.** The Forest-Settement-officer, when passing any order under section 11, shall record, so far as may be practicable,—

(*a*) the name, father's name, caste, residence and occupation of the person claiming the right;

(*b*) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any), in respect of which the exercise of such rights is claimed.

Record where he admits claim.

**13.** If the Forest-Settlement-officer admits in whole or in part any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive, or such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of rights admitted.

**14.** After making such record, the Forest-Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose, the Forest-Settlement-officer may—

(*a*) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(*b*) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(*c*) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be), to the extent so admitted, at such seasons, within such portions of the proposed forest and under such rules, as may from time to time be prescribed by the Local Government.

Commutation of rights.

**15.** In case the Forest-Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from order passed under section 10, 11, 14 or 15.

**16.** Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest-Settlement-officer under section 10, 11, 14 or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders:

Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest-court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

Appeal under

**17.** Every appeal under section 16 shall be made by petition in writing,

section 16. and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest-court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

Pleaders. **18.** The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest-Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

Notification declaring forest reserved. **19.** When the following events have occurred (namely) :—

(*a*) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and

(*b*) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section 16 of that Act, X of 1870.

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in neighbourhood of forest. **20.** The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

Power to revise arrangement made under section 14 or 17.

**21.** The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

No right acquired over reserved forest, except as here provided.

**22.** No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

Rights not be alienated without sanction.

**23.** Notwithstanding anything contained in section 22, no right continued under section 14, clause (*c*), shall be alienated by way of grant, sale, lease, mortgage or otherwise without the sanction of the Local Government: Provided that when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 13.

Power to stop ways and water-courses in reserved forests.

**24.** The Forest-officer may from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

Acts prohibited in such forests.

**25.** Any person who—

(*a*) makes any fresh clearing prohibited by section 5, or

(*b*) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same;

or who, in a reserved forest,—

(*c*) kindles, keeps or carries any fire except at such seasons as the Forest-officer may from time to time notify in this behalf;

(*d*) trespasses or pastures cattle, or permits cattle to trespass;

(*e*) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(*f*) fells, girdles, lops, taps or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same;

(*g*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes, any forest-produce;

(*h*) clears or breaks up any land for cultivation or any other purpose; or,

(*i*) in contravention of any rules which the Local Government may from time to time prescribe,[a] kills or catches elephants,[a] hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (*a*) any act done by permission in writing of the Forest-officer, or under any rule made by the Local Government; or (*b*) the exercise of any right continued under section 14, clause (*c*), or created by grant or contract in writing made by or on behalf of Government under section 22.

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Power to declare forest no longer reserved.

**26.** The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

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## CHAPTER III.

### OF VILLAGE-FORESTS.

Formation of village-forests.

**27.** The Local Government may from time to time assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

The Local Government may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the

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a, b These words are repealed wherever the Elephants Preservation Act, 1879, is in force,—see Act VI of 1879, section 2.

community to which any such assignment is made may be provided with timber or other forest-produce, or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests.

## CHAPTER IV.

### Of Protected Forests.

"Protected forests."

**28.** The Local Government may from time to time, by notification in the local official Gazette, declare the provisions of this chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-lands comprised in any such notification shall be called a "protected forest."

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been enquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved:

Provided that if, in the case of any forest-land or waste-land, the Local Government thinks that such enquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such enquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Power to issue notification—

**29.** The Local Government may from time to time, by notification in the local official Gazette,—

reserving trees,

(*a*) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification;

closing forests,

(*b*) declare that a portion of such forest be closed for such term not exceeding twenty years as the Local Government thinks fit, and that

the rights of private persons (if any) over such portion shall be suspended during such term: Provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed;

prohibiting collection of forest-produce, &c.,

and breaking-up or clearing of land.

(*c*) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, any land in any such forest: and

(*d*) alter or cancel such declaration or prohibition.

Publication of translation of such notification in neighbourhood.

**30.** The Collector or Deputy Commissioner of the district shall cause a translation into the language of the district of every notification issued under section 29 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Power to make rules for protected forests.

**31.** The Local Government may from time to time make rules to regulate the following matters:—

(*a*) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;

(*b*) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons;

(*c*) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;

(*d*) the payments (if any) to be made by the persons mentioned in clauses (*b*) and (*c*) of this section, for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(*e*) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payments shall be made;

(*f*) the examination of forest-produce passing out of such forests;

(*g*) the clearing and breaking-up of land for cultivation or other purposes in such forests;

(*h*) the protection from fire of timber lying in such forests and of trees reserved under section 29;

(*i*) the cutting of grass and pasturing of cattle in such forests;

(*j*) [a] killing or catching elephants,[a] hunting, shooting, fishing, poisoning water, and setting traps or snares in such forests;

(*k*) the protection and management of any portion of a forest closed under section 29;

(*l*) the exercise of rights referred to in section 28.

Penalties for acts in contravention of notification under section 29.

**32.** Any person who commits any of the following offences:—

(*a*) fells, girdles, lops, taps or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages, any such tree;

(*b*) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(*c*) contrary to any prohibition under section 29, breaks-up or clears for cultivation or any other purpose any land in any protected forest;

(*d*) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen or felled, or to any closed portion of such forest;

(*e*) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion;

(*f*) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(*g*) permits cattle to damage any such tree,

(*h*) infringes any rule made under section 31,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Nothing in this chapter to prohibit acts done in certain cases

**33.** Nothing in this chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29) in the exercise of any right recorded under section 28.

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[a-a] These words are repealed wherever the Elephants Preservation Act, 1879, is in force,—see Act VI of 1879, section 2.

(*Chapter V.—Forests under Conservancy-administration when this Act comes into force. Chapter VI.—Of the Control over Forests and Lands not being the Property of Government. Secs. 34-35.*)

## CHAPTER V.

### FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

Forests under conservancy-administration when this Act comes into force.

**34.** Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can, according to justice, equity and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be:

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been enquired into, settled and recorded in a manner which the Local Government thinks sufficient:

Provided also that, if any such rights have not on such date been so enquired into, settled and recorded, the Local Government shall direct that the same shall be enquired into, settled and recorded in the manner provided by this Act for reserved or protected forests, as the case may be; and, until such enquiry, settlement and record have been completed, no such declaration shall abridge or affect such rights.

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## CHAPTER VI.

### OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forests for special purposes.

**35.** The Local Government may from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

(*a*) the breaking-up or clearing of land for cultivation;

(*b*) the pasturing of cattle;

(*c*) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes :—

*First.*—For protection against storms, winds, rolling stones, floods and avalanches;

*Second.*—For the preservation of the soil on the ridges and slopes, and in the valleys, of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

*Third.*—For the maintenance of a water-supply in springs, rivers and tanks;

*Fourth.*—For the protection of roads, bridges, railways and other lines of communication;

*Fifth.*—For the preservation of the public health;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit:

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to shew cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf, and have been considered by the Local Government.

Power to assume management of forests.

**36.** In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land, and after considering his objections (if any), place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

The net profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

Expropriation of forests in certain cases.

**37.** In any case under this chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870.

X of 1870.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

Protection of forests at request of owners.

**38.** The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire—

(*a*) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(*b*) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

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## CHAPTER VII.

### Of the Duty on Timber.

Power to impose duty on timber.

**39.** The Local Government, with the previous sanction of the Governor General in Council, may levy a duty in such manner, at such places, and at such rates, as it may from time to time prescribe by notification in the local official Gazette on all timber—

(*a*) which is produced in British India, and in respect of which the Government has any right;

(*b*) which is brought from any place beyond the frontier of British India.

Power to fix value for *ad valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time fix, by like notification, the value on which such duty shall be assessed.

All duties on timber, which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

Limit not to apply to purchase-money or royalty.

**40.** Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit in the same manner as duty is levied.

## CHAPTER VIII.

### Of the Control of Timber and other Forest-produce in Transit.

Power to make rules to regulate transit of forest-produce.

**41.** The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce.

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber and other forest-produce may be imported, exported or moved, into, from or within, British India;

(*b*) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production and return of such passes and for the payment of fees therefor;

(*d*) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

(*e*) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from, such depôt[a];

(*f*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches and leaves into any such river, or any act which may cause such river to be closed or obstructed;

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[a] *Sic.* Read "depôts."

(*g*) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(*h*) prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking-hammers or other implements used for marking timber;

(*i*) regulate the use of property-marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

Penalty for breach of rules made under section 41.

**42.** The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

Government and Forest-officers not liable for damage to forest-produce at depôt.

**43.** The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

All persons bound to aid in case of accident at depôt.

**44.** In case of any accident or emergency involving danger to any property at any such depôt, every person employed at such depôt, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

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## CHAPTER IX.

### Of the Collection of Drift and Stranded Timber.

Certain kinds of timber to be deemed

**45.** All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered under

section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Local Government directs, all unmarked wood and timber,

shall be deemed to be the property of Government unless and until any person establishes his right and title thereto, as provided in this chapter.

property of Government until title thereto proved, and may be collected accordingly.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to such depôts as the Forest-officer may from time to time notify as depôts for the reception of drift-timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

**46.** Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

**47.** When any such statement is presented as aforesaid, the Forest-officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

**48.** If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession

of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person, free from all encumbrances.

Government and its officers not liable for damage to such timber.

**49.** The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

Payments to be made by claimant before timber is delivered to him.

**50.** No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

Power to make rules and prescribe penalties.

**51.** The Local Government may from time to time make rules to regulate the following matters (namely) :—

(*a*) the salving, collection and disposal of all timber mentioned in section 45 ;

(*b*) the use and registration of boats used in salving and collecting timber ;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber ;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

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## CHAPTER X.

### Penalties and Procedure.

Seizure of property liable to confiscation.

**52.** When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

**53.** Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest-produce, tools, &c, when liable to confiscation.

**54.** All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

**55.** When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, and in any other case may be disposed of in such manner as the Court may direct.

Procedure when offender not known, or cannot be found.

**56.** When the offender is not known, or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom he deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure as to perishable property seized under section 52.

**57.** The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under sections 54, 55 and 56.

**58.** The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55 or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable; and the order passed on such appeal shall be final.

Property when to vest in Government.

**59.** When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has elapsed and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

**60.** Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Punishment for wrongful seizure.

**61.** Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.

**62.** Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,— XLV of 1860.

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(*b*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(*c*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

**63.** Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdiction in the case.

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (*c*).

64. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence. Power to prevent commission of offence.

65. The District Magistrate,[a] and any Magistrate of the first class specially empowered in this behalf by the Local Government, may try summarily, under the Code of Criminal Procedure,[b] any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both. Power to try offences summarily.

X of 1882.

66. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act: Provided that no person shall be punished twice for the same offence. Operation of other laws not barred.

67. The Local Government may from time to time, by notification in the local official Gazette, empower any Forest-officer by name, or as holding an office, to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence under section 61 or section 62 a sum of money by way of compensation for any damage which may have been committed, and to release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer. Power to compound offences.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken under this Act against such person or property; but nothing herein contained shall exempt such person from prosecution on the same facts under any other law for the time being in force.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved. Presumption that forest-produce belongs to Government.

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## CHAPTER XI.

### CATTLE-TRESPASS.

69. Cattle trespassing in a reserved forest or in any portion of a protected Cattle-tres-

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a, b See Act X of 1882, section 3.

pass Act, 1871, to apply.

forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer. I of 1871

Power to alter fines fixed by that Act.

**70.** The Local Government may from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the 12th section of the Act last aforesaid, there shall be levied, for each head of cattle impounded under section 69 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say:— I of 1871.

| | |
|---|---|
| For each elephant . . . . . | ten rupees. |
| For each buffalo or camel . . . . . | two „ |
| For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer . . . . . | one rupee. |
| For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid . | eight annas. |

## CHAPTER XII.

### OF FOREST-OFFICERS.

Local Government may invest Forest-officers with certain powers

**71.** The Local Government may invest any Forest-officer, by name or as holding an office, with the following powers, that is to say:—

(*a*) power to enter upon any land, and to survey, demarcate and make a map of the same;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue a search-warrant under the Code of Criminal Procedure;[a] X of 1882.

(*d*) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest-officers deemed public servants.

**72** All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860.

Indemnity for acts done in good faith.

**73.** No suit shall lie against any public servant for anything done by him in good faith under this Act.

[a] See Act X of 1882, section 3.

Forest-officers not to trade.

**74.** Except with the permission in writing of the Local Government, on Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or Foreign territory.

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## CHAPTER XIII.

### Subsidiary Rules.

Additional powers to make rules.

**75.** The Local Government may from time to time make rules—

(*a*) to prescribe and limit the powers and duties of any Forest-officer under this Act;

(*b*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(*c*) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(*d*) generally to carry out the provisions of this Act.

Penalties for breach of rules.

**76.** Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Rules when to have force of law.

**77.** All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law:

Provided that no rule made under section 27, 31 or 41 shall be so published without the previous sanction of the Governor General in Council.

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## CHAPTER XIV.

### Miscellaneous.

Persons bound to assist Forest-officers and Police-officers.

**78.** Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Management of forests the joint property of Government and other persons.

**79.** If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time either—

(*a*) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or

(*b*) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (*a*) of this section, the management of any forest, waste-land or produce, it may, from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV of this Act shall apply to such forest waste-land or produce, and thereupon such provisions shall apply accordingly.

Failure to perform service for which a share in produce of Government forest is enjoyed.

**80.** If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so performed: Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

Recovery of money due to Government.

**81.** All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

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X of 1870.

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(*See section 1.*)

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| Number and year of Act or Regulation. | Title. | Extent of repeal. |
|---|---|---|
| Act VII of 1865 ... | An Act to give effect to Rules for the management and preservation of Government forests. | So much as has not been repealed. |
| Act VII of 1869 ... | An Act to give validity to certain rules relating to forests in British Burma. | The whole. |
| Act XIII of 1873 ... | An Act to amend the law relating to timber floated down the rivers of British Burma. | So much as has not been repealed. |
| Regulation IX of 1874 | The Arakan Hill District Laws Regulation, 1874. | So far as it relates to Acts VII of 1865 and VII of 1869. |

# SEA CUSTOMS ACT, 1878.

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## ACT No. VIII OF 1878.

*Received the Governor General's assent on the 8th March, 1878.*

## An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows:— Preamble.

## CHAPTER I.

### PRELIMINARY.

1. This Act may be called "The Sea Customs Act, 1878": Short title.

Local extent. Commencement.

It extends to the whole of British India, and shall come into force on the first day of April, 1878.

Repeal of enactments.

2. The Acts mentioned in the first schedule hereto annexed are repealed to the extent specified therein.

References to enactments repealed.

All references to any of the said Acts, in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act.

Saving of appointments, &c.

All appointments, rules, declarations, exemptions and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates and periods fixed, and notifications, instructions, directions, prohibitions, passes and licenses issued, under any Act hereby repealed shall, if the same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed and issued under this Act, in so far as they are consistent herewith.

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context—

"Chief Customs-authority."

(*a*) "Chief Customs-authority" denotes the person authorized to exercise, subject to the Local Government, the chief control in matters relating to sea-customs in any place in which this Act operates:

"Chief Customs-officer."

(*b*) "Chief Customs-officer" denotes the chief executive officer of sea-customs for any port to which this Act applies:

"Customs-collector."

(*c*) "Customs-collector" includes every officer of Customs for the time being in separate charge of a custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge:

"Customs-port."

(*d*) "Customs-port" means any place except Aden declared under section 11 to be a port for the shipment and landing of goods:

"Foreign port."

(*e*) "Foreign port" means Aden and any place beyond the limits of British India:

"Vessel."

(*f*) "Vessel" includes anything made for the conveyance by water of human beings or property:

"Coasting-vessel."

(*g*) "Coasting-vessel" denotes any vessel proceeding from one customs-port to another customs-port, whether touching at any intermediate Foreign port or not: or proceeding from or to a customs-port to or from a place declared to be a port under section 12:

"Master."

(*h*) "Master," when used in relation to any vessel, means any person, except a pilot or harbour-master, having command or charge of such vessel:

"Warehousing port."

(*i*) "Warehousing port" means any customs-port declared under section 14 to be a warehousing port:

(*j*) "Warehouse" denotes any place appointed or licensed under section 15 or section 16. "Warehouse."

**4.** When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods. Agent of owner of goods to be deemed owner for certain purposes.

**5.** Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent. When ship's agent may act for master.

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## CHAPTER II.

### Appointment and Powers of Officers, &c.

**6.** The Local Government of every place in which duties of sea-customs are leviable may appoint such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers. Appointment of Customs-officers.

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**8.** At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the Local Government otherwise direct, perform all duties imposed by this Act on a Customs-collector and other officers of Customs. Performance of duties of Customs-collector where no custom-house.

**9.** The Chief Customs-authority may from time to time, with the sanction of the Local Government, make rules consistent with this Act— Power to make rules.

(*a*) prescribing and limiting the powers and duties of officers of Customs;

(*b*) regulating the delegation of their duties by such officers; and

(*c*) generally to carry out the provisions of this Act.

**10.** No Chief Customs-authority or Chief Customs-officer, and no other officer of Customs whom such Chief Authority or Chief Officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor. Customs-officers exempted from service on jury or inquest or as assessors.

## CHAPTER III.

### APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING-STATIONS.

Power to appoint ports, wharves and custom-houses.

**11.** The Local Government may, from time to time, by notification in the official Gazette,—

(*a*) declare the places within the territories administered by it which alone shall be ports for the shipment and landing of goods;

(*b*) declare the limits of such ports;

(*c*) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods;

(*d*) declare the limits of any such wharf;

(*e*) alter the name of any such port or wharf; and

(*f*) declare what shall, for the purposes of this Act, be deemed to be a custom-house, and the limits thereof.

Power to declare places to be ports for coasting-trade.

**12.** The Local Government may also, from time to time, in like manner, declare places to be ports for the carrying on of coasting-trade with customs-ports, or with any specified customs-port, and for no other purpose.

Power to declare that Foreign ports shall be regarded as customs-ports for certain purposes.

**13.** The Governor General in Council may, from time to time, direct, by notification in the *Gazette of India*, that all goods or any specified class of goods imported from or exported to any Foreign port to or from a customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be.

Power to declare warehousing ports.

**14.** The Local Government may, from time to time, declare, by notification in the official Gazette, that any customs-port shall be a warehousing port for the purposes of this Act.

Power to appoint public warehouses.

**15.** At any warehousing port, the Chief Customs-authority may, from time to time, appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to license private warehouses.

**16.** At any warehousing port, the Chief Customs-officer may, from time to time, license private warehouses [a] wherein dutiable goods may be deposited as aforesaid.

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[a] No arms, ammunition or military stores may be deposited in any warehouse licensed under section 16 without the sanction of the Local Government,—see Act XI of 1878, section 7.

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the Chief Customs-authority, and shall be signed by the applicant. Form of application for license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer. Revocation of license.

17. The Chief Customs-authority may, from time to time, appoint, in or near any customs-port, stations or limits at or within which vessels arriving at, or departing from, such port shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875, direct at what particular place in any such port vessels not brought into port by pilots shall anchor or moor. Stations for Customs-officers to board and land.

XII of 1875.

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## CHAPTER IV.

### Prohibitions and Restrictions of Importation and Exportation.

18. No goods specified in the following clauses shall be brought, whether by land or sea, into British India:— Prohibitions.

(*a*) any book printed in infringement of any law in force in British India on the subject of copyright,[a] when the proprietor of such copyright, or his agent, has given to the Chief Customs-authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire:

(*b*) counterfeit coin: or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight or fineness:

IX of 1876.

(*c*) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article:

(*d*) [b] articles bearing any names, brands or marks being, or purporting to be, the names, brands or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers.

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[a] See Act XX of 1847; also the enactments enumerated under the head 'Copyright' on page 268 of the 'Index to the Enactments relating to India', 2nd edition.

[b] See 39 & 40 Vic., cap. 36, section 153.

Power to prohibit or restrict importation or exportation of goods.

**19.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.

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## CHAPTER V.

### LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

Goods dutiable.

**20.** Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law [a] for the time being in force on—

(*a*) goods imported or exported by sea into or from any customs-port from or to any Foreign port;

(*b*) opium, salt or salted fish imported by sea from any customs-port into any other customs-port;

(*c*) goods brought from any Foreign port to any customs-port, and, without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs-port; and

(*d*) goods brought in bond from one customs-port to another:

Proviso.

Provided that no such duties shall be levied on goods belonging to the Government.

Goods partially composed of dutiable articles.

**21.** Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Power to fix tariff values.

**22.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which customs-duties are by law imposed, and alter any such values fixed by any Tariff Act [b] for the time being in force.

General power to exempt from customs-duties.

**23.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods.

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[a, b] See now Act XI of 1882.

The Local Government may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which Customs-duties are leviable. Power to authorize, in special cases, exemption from duty.

**24.** The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the custom-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use or as goods subject to duty. Baggage in actual use.

**25.** If goods produced or manufactured in British India be imported into any customs-port from any Foreign port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof: Re-imported articles of country-produce.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty. Proviso.

**26.** Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any customs-port, be subjected, unless the Chief Customs-authority in any particular case otherwise directs by special order, to payment of excise-duty, at the rate to which goods of the like kind and quality are liable at such port. Excise-duty on importation of certain country-goods.

**27.** All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs-port, and shall in other respects be dealt with as if they were imported from a Foreign port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free. Goods derelict and wreck.

**28.** Provisions and stores produced or manufactured in British India, required for use on board of any vessel proceeding to any Foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart: Country-provisions and stores may be shipped free of duty.

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Owner to declare real value, &c., of goods in bill-of-entry or shipping-bill.

**29.** On the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill-of-entry or shipping-bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Power to require production of invoice, &c.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information:

Provided that, if the owner makes and subscribes a declaration before the Customs-collector to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information.

"Real value" defined.

**30.** For the purposes of this Act the real value shall be deemed to be—

(*a*) the wholesale cash-price, less trade-discount, for which goods of the like kind and quality are sold or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever (except in the case of goods imported) of the amount of the duties payable on the importation thereof; or,

(*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

Examination of *ad valorem* goods.

**31.** Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill-of-entry or shipping-bill, the goods shall be assessed in accordance therewith.

Procedure where such goods are under-valued by owner.

**32.** If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill-of-entry or shipping-bill, such officer may detain such goods.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him; and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government.

If the goods be retained for the use of Government, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods, in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable, and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the under-valuation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such under-valuation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms, as the Chief Officer of Customs may determine.

Abatement allowed on damaged goods.

**33.** If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill-of-entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Reduced duty how determined.

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner:—

(*a*) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed; or

(*b*) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill-of-entry), and at such place, as the Customs-collector appoints; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof.

Deterioration of tariff-value goods.

**34.** When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill-of-entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon.

No abatement when duty is levied on quantity.

**35.** No abatement of duty on account of damage shall be allowed on wines, spirit or beer, or on any other articles on which duties are levied on quantity and not on value.

Restriction on amendment of bill-of-entry or shipping-bill.

**36.** Except as provided in section 94, no amendment of a bill-of-entry or shipping-bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the Custom-house.

Alteration of import-duty or tariff-valuation.

**37.** The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill-of-entry thereof is delivered to the Customs-collector under section 86:

Provided that, when such rate or valuation has been raised after the grant of port-clearance at the port of shipment, the rate and valuation applicable to such goods shall be the rate and valuation in force on the date of such grant:

Provided also that, if such goods are warehoused and re-assessed under section 115 of this Act, the rate and valuation applicable thereto shall be the rate and valuation in force at the time when application is made to clear such goods for home-consumption.

EXPLANATION.—A bill-of-entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

Alteration of export-duty or tariff-valuation.

**38.** The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping-bill of such goods is delivered under section 137.

Payment of duties short levied or erroneously refunded.

**39.** When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through mis-statement as to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund;

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid, unless claimed within three months.

**40.** No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

Power to give credit for, and keep account-current of, duties and charges.

**41.** The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

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## CHAPTER VI.

### Drawback.

Drawback allowable on re-export.

**42.** When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any Foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any Foreign port, or as provisions or stores for use on board a ship proceeding to a Foreign port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:

Conditions for grant of drawback.

Provided that, in every such case, the goods be identified to the satisfaction of the Customs-collector at such customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the custom-house, or within such extended term as the Chief Customs-authority, on sufficient cause being shown, in any case determines.

Drawback on goods exported to customs-port and thence to Foreign port. Proviso.

**43.** When any goods, having been charged with import-duty at one customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port:

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the custom-house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India.

Drawback of duties on wine and spirit allowed for officers of Navy.

**44.** A drawback of the whole of the customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty on the first entry thereof.

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively; that is to say:—

| | *Gallons.* |
|---|---|
| For every Admiral . . . . . | 1,260 |
| Vice-Admiral . . . . . | 1,050 |
| Rear-Admiral . . . . . | 840 |
| Captain of 1st and 2nd rate . . . . . | 630 |
| Captain of 3rd, 4th and 5th rate . . . . | 420 |
| Captain of an inferior rate . . . . . | 210 |
| Lieutenant or other Commanding Officer, Marine-officer, Master, Purser or Surgeon . . . | 105 |

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

**45.** Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping-bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves, as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

Transfer of wine or spirit from one Naval officer to another.

**46.** The Customs-collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same or of any other such vessel, as part of his authorized quantity;

or may permit the transhipment of any such wine or spirit from one vessel to another for the use of the same Naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

Provisions and stores for Her Majesty's Navy.

**47.** Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

Indian Marine and Marine-survey.

**48.** The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine-survey on board of any of the ships of such Marine or Survey proceeding to any port out of India; and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

Power to declare what goods are identifiable,

**49.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*,—

(*a*) declare what goods shall, for the purpose of this chapter, be deemed to be capable of being easily identified; and

and to prohibit drawback in case of specified Foreign port.

(*b*) prohibit the payment of drawback upon the re-exportation of goods to any specified Foreign port in India.

When no drawback allowed.

**50.** Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(*a*) upon goods not included in the export-manifest, or

(*b*) where the goods to be exported are of less value than the amount of drawback claimed, or

(*c*) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(*d*) on salt, salted fish or opium.

Time to claim drawback.

**51.** No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export.

When payment made.

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment.

Declaration by parties claiming drawback.

**52.** Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been re-landed and are not intended to be re-landed at any customs-port; and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon.

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## CHAPTER VII.

### Arrival and Departure of Vessels.

#### *Arrival and Entry of Vessels inwards.*

Power to fix places beyond which inward-bound vessels are not to proceed until manifest delivered.

**53.** The Local Government may, by notification in the local official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same.

Delivery of manifest when vessel anchors below place so fixed.

If, in any river or port wherein a place has been fixed by the Local Government under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Delivery of manifest where no place has been so fixed.

**54.** If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Signature and contents of manifest.

**55.** Every manifest shall be signed by the master, shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port and all ships' stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the Chief Customs-authority may from time to time direct.

Amendment of errors in manifest.

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Col-

lector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the Chief Customs-authority from time to time directs.

Except as herein provided, no import-manifest shall be amended.

Duty of person receiving manifest.

**56.** The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the Chief Customs-authority from time to time directs in this behalf.

Bulk not to be broken until manifest, &c., delivered, and vessel entered inwards.

**57.** No vessel arriving in any customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided, nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-collector, and an order has been given thereon for such entry.

Master, if required, to deliver bill-of-lading, &c., to Customs-collector, and answer questions.

**58.** The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill-of-lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cockett or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer.

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

Special pass for breaking bulk.

**59.** Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest and to the entry inwards of the vessel, a special pass permitting bulk to be broken.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

Manifest, &c., may be delivered by ship's agent.

**60.** Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master.

*Entry outwards, Port-clearance and Departure of Vessels.*[a]

Order for entry outwards to be

**61.** No vessel shall take on board any part of her export-cargo until a written application for entry of such vessel outwards, subscribed by the master

[a] Certain formalities are required, in respect of the marking of load-lines and the provision of lights and means for making fog-signals, before vessels may clear,—see Act VII of 1880, sections 34, 35, 38, 39 and 83.

obtained before export-cargo is shipped.

of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master and the name of every place for which cargo is to be shipped.

No vessel to depart without port-clearance.

**62.** No vessel, whether laden or in ballast, shall depart from any customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorized to grant the same.

No pilot to take charge of vessel proceeding to sea without production of port-clearance.

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance.

Application for port-clearance.

**63.** Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel.

Master on applying for port-clearance to deliver documents and answer questions.

The master shall, at the time of applying for port-clearance—

(*a*) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the Chief Customs-authority, signed by such master, specifying all goods to be exported in the vessel, and showing separately all goods and stores entered in the import-manifest and not landed or consumed on board or transhipped:

(*b*) deliver to the Customs-collector such shipping-bills or other documents as such Customs-collector, acting under the general instructions of such Chief Customs-authority, requires; and

(*c*) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import-manifests shall, *mutatis mutandis*, apply also to export-manifests delivered under this section.

Power to refuse port-clearance.

**64.** The Customs-collector may refuse port-clearance to any vessel until—

(*a*) the provisions of section 63 are complied with;

(*b*) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by a deposit at such rate, as such Customs-collector directs;

(*c*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed

under section 167, No. 17, and furnishes security for the discharge of the same;

(*d*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import-cargo in respect of such goods.

A ship's agent delivering a declaration under clause (*c*) of this section shall be liable to all penalties which might be imposed on the master under section 167, No. 17, and a ship's agent delivering a declaration under clause (*d*) of this section shall be bound to discharge all claims referred to in such declaration.

Grant of port-clearance.

**65.** When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (*b*) and (*c*) and (*d*) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs.

Grant of port-clearance on security of ship's agent.

**66.** Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules as the Chief Customs-authority may from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63.

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## CHAPTER VIII.

### General Provisions affecting Vessels in Port.

Power to depute Customs-officer to board ships.

**67.** The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port.

Duty of such officer.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders.

Officer and servant to be received.

**68.** Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

Accommodation of officer and servant.

Officers of Customs to have free access to every part of ship, and may seal and secure goods.

**69.** Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel.

Power to authorize search and opening of locks.

If any box, place or close receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

Goods not to be shipped, discharged or water borne except in presence of officer.

**70.** Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods, other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any customs-port, except in the presence of an officer of Customs.

Period allowed for discharge and shipment of cargo.

**71.** When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

Consequence of exceeding same.

If the period occupied in the discharge and shipment of cargo be in excess of 30 working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Allowance for period during which vessel is laid up

In calculating any period allowed, or any charge made, under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo and before commencing the shipment of export-cargo, is laid

up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted.

Goods not to be landed, &c., on Sundays or holidays, without permission,

**72.** Except with the written permission of the Customs-collector, no goods other than passengers' baggage shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

(*a*) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-authority;

nor except within fixed hours.

(*b*) on any day, except between such hours as such Authority from time to time appoints by notification in the official Gazette.

Goods not to be shipped, &c., except at wharves.

**73.** No goods shall in any customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

Power to exempt from sections 70 and 73.

**74.** Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the local official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs.

Power to make rules regarding baggage and mails.

**75.** The Chief Customs-authority may from time to time make rules for the landing and shipping of passengers' baggage and the passing of the same through the custom-house, and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

Landing-fees.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the Local Government from time to time directs shall be chargeable thereon as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house.

Boat-note.

**76.** When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be

on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the Chief Customs-authority may from time to time direct.

The Local Government may, from time to time, by notification in the local official Gazette, suspend the operation of this section in any customs-port or part thereof.

Goods water-borne to be forthwith landed or shipped.

**77.** All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

Such goods not to be transhipped without permission.

**78.** Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

Power to prohibit plying of unlicensed cargo-boats.

**79.** The Local Government may declare with regard to any customs-port, by notification in the local official Gazette, that after a date therein specified no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandize within the limits of such port.

Issue of licenses and registration of cargo-boats.

In any port with regard to which such notification has been issued, the Chief Officer of Customs, or other officer whom the Local Government appoints in this behalf, may, subject to such rules and on payment of such fees as the Local Government from time to time prescribes by notification in the local official Gazette, issue licenses for, and register, cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

Power to require goods to be weighed or measured on board before landing or after shipment.

**80.** The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on boardship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

(*Chapter IX.—Of Discharge of Cargo and Entry inwards of Goods. Secs. 81-84*)

## CHAPTER IX.

### Of Discharge of Cargo and Entry inwards of Goods.

Discharge of cargo may commence on receipt of due permission.

**81.** When an order for entry inwards of any vessel which has arrived in any customs-port, or a special pass permitting such vessel to break bulk, has been given, the discharge of the cargo of such vessel may be proceeded with.

Goods not to leave ship unless entered in manifest.

**82.** Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel unless they are entered in the original manifest of such vessel or in an amended or supplementary manifest received under section 55.

Procedure in respect of goods not landed within time allowed.

**83.** If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period as is specified in the bill-of-lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the Local Government from time to time appoints by notification in the official Gazette, or

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be,

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom-house, there to remain for entry.

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods;

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average or other charges of a stated amount, the Customs-collector shall hold such goods until he receives notice in writing that the said charges are paid.

Power to land small parcels.

**84.** At any time after the arrival of any vessel, the Customs-collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

Notice regarding un-

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or

claimed packages.

at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

Power to permit immediate discharge.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any customs-port to which the Local Government, by notification in the local official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

(*a*) at the custom-house or any specified landing-place or wharf; or

(*b*) at any landing-place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (*a*) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing-place or wharf any goods are discharged under clause (*b*) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

Entry for home-consumption or warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the Chief Customs-authority.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

Assessment of dutiable goods.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the

same for home-consumption, or warehouse them, subject to the provisions hereinafter contained.

Procedure in case of goods not cleared or warehoused within four months after entry of vessel.

88. If any goods are not entered and cleared for home-consumption, or warehoused, within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and, in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general averager if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85; next, to the payment of the duties which would be leviable on such goods if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs-collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same; provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

Power to direct sale of perishable goods.

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner:

Proviso.

Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner, as the Local Government may from time to time direct:

Provided also that nothing in this section shall authorize the removal for home-consumption of any dutiable goods without payment of duties of customs thereon.

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## CHAPTER X.

### Of Clearance of Goods for Home-consumption.

Clearance for home consumption.

89. When the owner of any goods entered for home-consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same; and such order shall be sufficient authority for the removal of such goods by the owner.

## CHAPTER XI.

### WAREHOUSING.

### *Of the Admission of Goods into a Warehouse.*

Application to warehouse.

**90.** When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

Form of application.

**91.** Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority.

Warehousing bond.

**92.** When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,—

(*a*) to observe all rules prescribed by this Act in respect of such goods;

(*b*) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority; and

(*c*) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Form of bond.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

and shall relate to the cargo or portion of the cargo of one vessel only.

Forwarding of goods to warehouse.

**93.** When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package and the warehouse or place in the warehouse wherein they are to be deposited.

Receipt of goods at warehouse.

**94.** On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector.

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the custom-house in charge of an officer of Customs, or kept in deposit pending such orders, as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill-of-entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

Goods how warehoused.

**95.** Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported.

Warrant to be given when goods are warehoused.

**96.** Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Form of warrant.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The Local Government may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

*Rules relating to Goods in a Warehouse.*

Access of Customs-officer to private warehouse.

**97.** The Customs-collector or any officer deputed by him for the purpose shall have access to any private warehouse licensed under this Act.

Power to cause packages lodged in warehouse to be opened and examined.

**98.** The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined, and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

Access of owners to warehoused goods.

**99.** Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Cus-

toms, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

Owners' power to deal with warehoused goods.

**100.** With the sanction of the Customs-collector, and after such notice given, and under such rules and conditions, as the Chief Customs-authority from time to time prescribes, any owner of goods may either before or after warehousing the same,—

(*a*) sort, separate, pack and repack the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits);

(*b*) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;

(*c*) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import-brands unless the whole of the wine or spirit so mixed be of the same brand;

(*d*) bottle-off wine or spirit from any casks;

(*e*) take such samples of goods as may be allowed by the Customs-collector with or without entry for home-consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

Payment of rent and warehouse-dues.

**101.** If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-authority or such officer of Customs as such Authority from time to time appoints in this behalf may fix.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within 10 days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding), cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered, and shall then pay over the surplus (if any) to the owner of the goods:

Provided that the application for such surplus be made within one year from the date of the sale of the goods, or that sufficient cause be shown for not making it within such period.

Goods not to be taken out of warehouse, except as provided by this Act.

**102.** No warehoused goods shall be taken out of any warehouse, except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Period for which goods may remain warehoused under bond.

**103.** Any goods warehoused may be left in the warehouse in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided:

Goods in private warehouse on cancellation of license.

Provided that, when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall, in manner hereinafter provided and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home-consumption or shipment.

*Of the Removal of Goods from one Warehouse to another.*

Power to remove goods from one warehouse to another in same port.

**104.** Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the Chief Customs-authority from time to time prescribes.

Power to remove goods from one port to another. Procedure.

**105.** Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the Chief Customs-authority from time to time prescribes.

Transmission of account of goods to officers at port of destination

**106.** When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination;

Bond for due arrival and re-warehousing.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time as the Chief Customs-authority directs.

Such bond may be taken by the proper officer, either at the port of removal or at the port of destination, as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

Remover may enter into a general bond

**107.** The Chief Customs-authority may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount and under such conditions, as the Chief Customs-authority approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due arrival and re-warehousing of such goods at the port of destination within such time as such Authority directs.

Goods on arrival at port of destination to be subject to same laws as goods on first importation.

**108.** Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

**109.** Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port.

Bond under section 92 to continue in force notwithstanding removal.

*Clearance for Home-consumption or Shipment.*

**110.** Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home-consumption by paying (*a*) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (*b*) all rent, penalties, interest and other charges payable to the Customs-collector in respect of such goods.

Clearance of bonded goods for home-consumption.

**111.** Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a Foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same:

Clearance of same for shipment to Foreign port.

Provided that the Governor General in Council may prohibit the shipment for exportation to any specified Foreign port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134, respectively.

**112.** Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a Foreign port.

Clearance of same for shipment as provisions, &c., on vessels proceeding to Foreign ports.

**113.** Application to clear goods from any warehouse for home-consumption or for shipment shall be made in such form as the Chief Customs-authority from time to time prescribes.

Form of application for clearance of goods.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods.

Application when to be made.

**114.** If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

Re-assessment of warehoused goods when damaged.

Re-assessment on alteration of duty or tariff-valuation.

**115.** If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff-valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with the second proviso to section 37.

Allowance in case of wine, spirit, beer or salt.

**116.** If it appear, at the time of clearing any wine, spirit, beer or salt from any warehouse for home-consumption, that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :—

(*a*) upon wine, spirit and beer in cask, to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the Local Government and notified in the official Gazette :

| | | | | | |
|---|---|---|---|---|---|
| For any time not exceeding | . . . . . | 6 months, | 2½ | per cent. |
| exceeding 6 months | and not exceeding | 12 | „ | 5 | „ |
| exceeding 12 months | and not exceeding | 18 | „ | 7½ | „ |
| exceeding 18 months | and not exceeding | 2 years, | 10 | | „ |
| exceeding 2 years | and not exceeding | 3 | „ | 12 | „ |

(*b*) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties :

(*c*) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette.

Further special allowance.

**117.** When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs-authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

*Of the Forfeiture and Discharge of the Bond*

If goods are improperly removed from warehouses or allowed to remain beyond time fixed,

**118.** If any warehoused goods are removed from the warehouse in contravention of section 102 ; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse ; or

or lost or destroyed,

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption or shipment or removed under this Act, are lost or destroyed otherwise than as provided in

section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector; or

if any such goods have been taken under section 100 as samples without payment of duty, or taken as samples.

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same. Collector may demand duty, &c.

**119.** If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand; Procedure on failure to pay duty, &c.

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The nett proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and, if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods: Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

**120.** When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond. Noting removal of goods.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping-bill under which they have been taken away if removed for exportation by sea, or of the bill-of-entry if removed for home-consumption, and the amount of duty paid (if any).

**121.** A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified. Register of bonds.

When such register shows that the whole of the goods covered by any bond have been cleared for home-consumption or shipment, or otherwise duly Cancellation and return of bonds.

accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

*Miscellaneous.*

Power to remit duties on warehoused goods lost or destroyed.

**122.** If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home-consumption are lost or destroyed by unavoidable accident or delay, the Chief Customs-authority may in its discretion remit the duties due thereon:

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

Responsibility of warehouse-keeper.

**123.** The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the custom-house Officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117:

Compensation for loss or injury.

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

Public warehouse to be locked.

**124.** Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs.

Power to decide where goods may be deposited in public warehouse, and on what terms.

**125.** The Chief Customs-authority, or such officer of Customs as such Authority from time to time appoints in this behalf, may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Expenses of carriage, packing, &c., to be borne by owners.

**126.** The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods, and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal Bonded Warehouse Association.

**127.** All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

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## CHAPTER XII.

### TRANSHIPMENT.

Power to permit transhipment without payment of duty.

**128.** In the ports of Calcutta, Madras, Bombay, Kárwár, Karáchi, Aden, Rangoon, Maulmain, Akyab, Chittagong and such other ports as the Governor General in Council may from time to time, by notification in the *Gazette of India*, direct in this behalf, the Customs-collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transhipment to some other customs or Foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination.

In any customs-port other than a port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port: provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs-port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-collector directs.

Superintendence of transhipment.

**129.** An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

Subsidiary rules as to transhipment.

**130.** The powers conferred on the Customs-collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the Local Government.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint in this behalf.

Entry and warehousing, on arrival, of goods tran-

**131.** All goods transhipped under the second clause of section 128 for removal to a customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the

shipped under section 128, clause 2.

laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.

**132.** If two or more vessels belonging wholly or in part to the same owner be at any customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Levy of transhipment-fee.

**133.** A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the local official Gazette, prescribe for each port.

Power to prohibit transhipment.

**134.** The Governor General in Council may from time to time, by notification in the *Gazette of India*, prohibit, at any specified port, or at all ports, the transhipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transhipping any specified class of goods.

No goods to be transhipped except as provided.

**135.** Except as provided in this Act, no goods shall be transhipped at any port or place in British India.

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## CHAPTER XIII.

### Exportation or Shipment, and Re-landing.

No goods to be shipped, &c, till entry outwards of vessel.

**136.** Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

Clearance for shipment.

**137.** Unless the Chief Customs-authority shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette, no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until—

(*a*) the owner has delivered to the Customs-collector, or other proper officer, a shipping-bill of such goods in duplicate, in such form

and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customs-authority;

(*b*) such owner has paid the duties (if any) payable on such goods; and

(*c*) such bill has been passed by the Customs-collector.

Bond required in certain cases before exportation.

**138.** Before any warehoused goods, or goods subject to excise-duties, or goods entitled to drawback of customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

Additional charge on goods cleared for shipment after port-clearance granted.

**139.** When goods are cleared for shipment on a shipping-bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

(*a*) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value;

(*b*) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

Notice of non-shipment or re-landing, and return of duty thereon.

**140.** If any goods mentioned in a shipping-bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs-collector.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

Goods re-landed or trans-shipped from a vessel returning to port, or putting into another port.

**141.** If, after having cleared from any customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-collector in that behalf.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

Vessel returning to port may enter and land goods under import-rules.

**142.** In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

Landing of cargo during repairs.

**143.** The Customs-collector may, on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

All expenses attending such custody shall be borne by the master.

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## CHAPTER XIV.

### SPIRIT.

*Exportation of Spirit under Bond for Excise-duty.*

Rules for removal of spirit from distillery, without payment of duty, for exportation.

**144.** The Chief Customs-authority may from time to time make rules prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

(*a*) not exported within four months from the date of the bond, or

(*b*) exported to a customs-port, unless the payment of excise-duty as provided by this chapter in respect thereof at the port of destination is within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the

period allowed for the exportation of any such spirit, or for the production of such proof that duty has been paid.

Spirit for export to be taken direct from distillery to custom-house under pass.

**145.** Spirit intended for exportation under bond for the excise-duty shall be taken from the distillery direct to the custom-house, under passes to be granted for that purpose by the officers of Excise.

Gauging and proving of spirit.

**146.** Spirit brought to the custom-house for exportation under bond for the excise-duty shall, previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond shall be determined in the same manner.

Duty to be recovered on any deficiency in spirit under bond.

**147.** Excise-duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the Local Government and notified in the local official Gazette.

Duty on spirit exported under bond from one Indian port to another.

**148.** Spirit exported under bond for excise-duty from any customs-port to any other customs-port shall be charged at the port of importation with excise-duty at the ordinary rate to which spirit of the like kind and strength is liable at such port.

Removal for local consumption of spirit intended for exportation.

**149.** Spirit brought to the custom-house for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise.

Credit for every such payment shall be given in discharge of the bond to which it relates.

*Drawback of Excise-duty on Export of Spirit.*

Drawback of excise-duty on spirit exported.

**150.** A drawback of excise-duty paid on spirit manufactured in British India and exported to any Foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation:

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

*Miscellaneous.*

Differential duty to be levied in certain cases.

**151.** If spirit manufactured in British India upon which excise-duty has been paid is exported from one customs-port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon

such spirit, a differential duty shall be charged thereon, at such rate as the Local Government at such port may, by notification in the local official Gazette, from time to time prescribe.

Rum-shrub, &c, how charged with duty.

**152.** Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Provisions respecting spirit applied to such liquors.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

Conditions of drawback and remission of duty on spirit.

**153.** No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

Re-land of spirit shipped.

**154.** No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

**155.** When by any law for the time being in force a special duty is imposed on spirit rendered unfit for human consumption, the Local Government may from time to time make rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently so rendered unfit, and for causing such spirit to be so rendered, if necessary, by their own officers, and at the expense of the person importing the same, before the customs-duties leviable thereon are levied.

Decision where no rules, or their applicability disputed.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

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## CHAPTER XV.

### COASTING-TRADE.

Chapters VII IX, X and part of Chapter XIII inapplicable to coasting-trade.

**156.** Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels.

Power to regulate coasting-trade.

**157.** The Local Government may, from time to time, make rules consistent with the provisions of this chapter—

(*a*) extending any provision of the chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels;

(*b*) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this chapter;

(*c*) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a Foreign port, or at a customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a Foreign port have been unladen;

(*d*) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports, in a coasting-vessel.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

**158.** Before any coasting-vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs-collector a manifest in duplicate containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed by the Chief Customs-authority.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

Delivery of manifest, &c., on arrival.

**159.** Within twenty-four hours after the arrival of any coasting-vessel at any customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any Foreign port between such port of arrival and her last preceding customs-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the customs-port of arrival be an intermediate port, and a portion only

of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any customs-port does not, owing to short-shipment, re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

Departure from intermediate port.

**160.** Before any coasting-vessel departs from any customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

Power to require bond before port-clearance is granted.

**161.** The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector.

Discharge of cargo.

**162.** When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

(*a*) if the vessel has not touched at any intermediate Foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner, without entry thereof at the custom-house and clearance for home-consumption, but subject to such general check and control as the Chief Customs-authority may from time to time by rules prescribe;

(*b*) if the vessel has so touched at any such port, or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until

such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

Goods on coasting-vessel, if excisable, not to be unladen without permission.

**163.** If any of the goods on board of any coasting-vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

Grant and revocation of general pass.

**164.** Notwithstanding anything hereinbefore contained, the Chief Customs-authority may authorize the Customs-collector to grant a general pass, on any conditions which such Authority thinks expedient, for the lading and clearance, and for the entry and unlading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein.

Any such general pass may be revoked by order of the Chief Customs-authority by whom the grant thereof was authorized, by notice in writing under the hand of such authority, delivered to the master or to the owner of such steam-vessel, or to any of the crew on board.

Rules respecting cargo-books to be kept by masters of coasting-vessels.

**165.** The Chief Customs-authority may direct that the master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs and the port to which on each voyage she is bound.

At every port of lading such master shall enter, or cause to be entered, in such book the name of such port, and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel;

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

Power to board and examine coasting-vessels.

**166.** Any duly empowered officer of Customs may go on board of any coasting-vessel in any port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection.

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## CHAPTER XVI.

### Offences and Penalties.

Punishments for offences.

**167.** The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:—

| Offences. | Section of this Act to which offence has reference. | Penalties |
|---|---|---|
| 1.—Contravening any rule made under this Act. | General . . | Penalty not exceeding five hundred rupees. |
| 2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods, | 11 | such goods shall be liable to confiscation. |
| 3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or | General ... | such person shall be liable to a penalty not exceeding one thousand rupees. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under No 2[a] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the landing or[b] shipment of goods, | 11 | |
| 4.—If any vessel, which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo, | 11 | such vessel shall be liable to confiscation. |
| 5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any sea going vessel inward-bound; or<br>if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward-bound; or<br>if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being re-landed, | 11 | such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 6.—If any vessel arriving at, or departing from, any customs-port fails, when so required under section 17, to bring-to at any such station as has been appointed by the Chief Customs-authority for the boarding or landing of an officer of Customs, | 17 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 7.—If any vessel arriving at any customs-port, after having come to its proper place of mooring or unlading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875, or other lawful authority, to some other place of mooring or unlading, or | ... | the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid. |

XII of 1875.

[a] *Sic.* Read "No 4"

[b] *Sic.* Read "and."

| Offences | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the Chief Customs-authority under section 17, | 17 | |
| 8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction; or<br>if any attempt be made so to import or export any such goods; or<br>if any such goods be found in any package produced to any officer of Customs as containing no such goods; or<br>if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India; or<br>if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction, | 18 & 19 | such goods shall be liable to confiscation; and<br>any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees. |
| 9.—If, upon an application to pass any goods through the custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner, | General ... | such person shall be liable to a penalty not exceeding one thousand rupees. |
| 10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act), | 42 & 43 | such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation;<br>and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods, or not exceeding one thousand rupees. |

| Offences | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs, | 44 to 48 | such wine, spirit, provisions or stores shall be liable to confiscation. |
| 12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed, | 50 | such goods shall be liable to confiscation. |
| 13.—If, in any river or port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs or other person duly authorized to receive the same, | 53 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act, | 53 | such master shall be liable to a penalty not exceeding one thousand rupees. |
| 15.—If, after any vessel arriving has entered any customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act, | 54 | Ditto ditto. |
| 16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage; or | 55 & 63 | the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees. |
| if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel, | 55 & 63 | |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel; or<br>if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom-house, | 55 & 64 | the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article. |
| 18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56, | 53, 54 & 56 | such person shall be liable to a penalty not exceeding five hundred rupees. |
| 19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken, | 57 & 59 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 20.—If any bill-of-lading or copy required under section 58 is false and the master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or<br>if the goods mentioned in any such bill or copy have not been *bonâ fide* shipped as shewn therein; or<br>if any such bill-of-lading or any bill-of-lading of which a copy is delivered has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or<br>if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector, | 58 | the master of the vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 21.—If any master of a vessel attempts to depart without a port-clearance, | 62 | such master shall be liable to a penalty not exceeding five hundred rupees. |

| Offences | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 22.—If any vessel actually departs without a port-clearance, | 62 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |
| 23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance, | 62 | such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees. |
| 24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67, | 68 | such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board, and the vessel if not entered shall not be allowed to enter until such penalty is paid. |
| 25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board. | 68 | such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees. |
| 26.—If any master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or<br>if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods; or<br>if any such goods are secretly conveyed away; or<br>if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission, | 69 | the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees. |
| 27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70, | 70 | such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be relanded for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 28.—If any master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped or water-borne contrary to any of the provisions of section 70, 72 or 75, | 70, 72 & 75 | such master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped or water-borne shall be liable to confiscation. |
| 29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel and warehoused or passed for importation, or of being shipped for exportation, be found without such note; or<br>if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel, | 76 | such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods. |
| 30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition, | 76 | such person, master or officer shall be liable to a penalty not exceeding five hundred rupees. |
| 31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose; or | 73 | such goods shall be liable to confiscation; and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods. |
| if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay; or | 77 | |
| if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector; or | | |
| if any goods are transhipped contrary to the provisions of section 78, | 78 | |
| 32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered, | 79 | such goods, unless they are covered by a special permit from the Customs-collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 33.—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel, | 55 & 82 | such master shall be liable to a penalty not exceeding one thousand rupees. |
| 34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom-house, | General ... | such goods shall be liable to confiscation. |
| 35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained, | 55 & 82 | such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs. |
| 36.—If, after any goods have been landed and before they have been passed through the custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue, | 86 & 87 | such goods shall be liable to confiscation; or<br>if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article. |
| 37.—If it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that,<br>(*a*) the packages in which they are contained differ widely from the description given in the bill-of-entry or application for passing them; or<br>(*b*) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions, according to which such goods are chargeable with duty, or are being imported or exported; or | 86 & 137 | such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and<br>every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| (*c*) the contents of such packages have been mis-stated in regard to sort, quality, quantity or value; or<br>(*d*) goods not stated in the bill-of-entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs,<br>and such circumstance is not accounted for to the satisfaction of the Customs-collector, | | |
| 38.—If, when goods are passed by tale or by package, any omission or mis-description thereof tending to injure the revenue be discovered, | 86 & 94 | the person guilty of such omission or mis-description, shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or mis-description, unless it be proved to the satisfaction of the officer in charge of the custom-house that the variance was accidental. |
| 39.—If, without entry duly made, any goods are taken or passed out of any custom-house or wharf, | 86 | the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation. |
| 40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage, | General ... | such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation. |
| 41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct, | 93 | such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer, | 94 | such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation. |
| 43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95, | 94 & 95 | such goods shall be liable to confiscation. |
| 44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto. or, upon demand made by any such officer, refuses access to any such officer, | 97 | such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled. |
| 45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof, | Chap. XI. | such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees. |
| 46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods, | 99 | such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees. |
| 47.—If any warehoused goods are opened in contravention of the provisions of section 95; or<br>if any alteration be made in such goods or in the packing thereof, except as provided in section 100, | 98 & 100 | such goods shall be liable to confiscation. |
| 48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117, | 123 | the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient. |

| Offences. | Section of this Act to which offence has reference. | Penalties |
|---|---|---|
| 49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector, | 123 | such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient. |
| 50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment, | Chap. XI. | such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees. |
| 51.—If any goods lodged in a private warehouse are found to exceed the registered quantity, | Chap. XI. | such excess, unless accounted for to the satisfaction of the officer in charge of the Custom-house, shall be charged with five times the ordinary duty thereon. |
| 52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery, | Chap. XI. | such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees. |
| 53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein, | Chap. XI. | such person shall be liable to a penalty not exceeding one thousand rupees. |
| 54.—If any person contravenes any rule regarding the process of transhipment made by the Local Government, or | 130 | such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation. |
| any prohibition or order relating to transhipment notified by the Governor General in Council, or | 134 | |
| tranships goods not allowed to be transhipped, | | |
| 55.—If any goods be taken on board of any vessel at any customs-port in contravention of section 136, | 136 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |

| Offences | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 56.—If any goods not specified in a duly passed shipping-bill are taken on board of any vessel, contrary to the provisions of section 137, | 137 | the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods. |
| 57.—If any goods specified in the manifest of any vessel, or in any shipping-bill, are not duly shipped before the departure of such vessel, or are relanded;<br>and notice of such short shipment or relanding be not given as required by section 140, | 140 | the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation. |
| 58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared, | 141[a] | the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed. |
| 59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142, | 141[b] | the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector. |
| 60.—If any person, without a special pass from an officer of excise at the place of exportation, relands or attempts to reland any spirit shipped for exportation, | 154 | such person shall be liable to a penalty not exceeding five hundred rupees. |
| 61.—If any person wilfully contravenes any rule relating to spirits made under section 155, | 155 | such person shall be liable to a penalty not exceeding five hundred rupees;<br>and all such spirit shall be liable to confiscation. |
| 62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed, | 157 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees. |

[a] *Sic.* Read "141, 142 and 143."

[b] *Sic.* Read "142."

| Offences. | Section of this Act to which offence has reference | Penalties. |
|---|---|---|
| 63.—If, contrary to any such rules, any coasting-vessel touches at any Foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or<br>if the master of any such vessel which has touched at a Foreign port fails to declare the same in writing to the Customs-collector at the customs-port at which such vessel afterwards first arrives, | 159 | the master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such Foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a Foreign port, as the case may be. |
| 64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with, | 158, 159 & 160 | the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees. |
| 65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production, | 161 | such person shall be bound to pay a penalty equal to double the amount of customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a Foreign port. |
| 66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted, | 164 | such master shall be liable to a penalty not exceeding one thousand rupees. |
| 67.—If any master of a coasting-vessel contravenes any of the provisions of section 165, | 165 | such master shall be liable to a penalty not exceeding five hundred rupees. |
| 68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or<br>if any package is found to contain dutiable goods not entered, or not entered as such, in such book, | 166 | such package, with its contents, shall be liable to confiscation. |

| Offences. | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 69.—If the master of any coasting-vessel, required under section 165 to keep a cargo-book, fails correctly to keep or to cause to be kept such book, or to produce the same on demand ; or<br>if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered ; or<br>if any goods entered as laden and not noted as delivered, be not on board, | 165 | such master shall be liable to a penalty not exceeding five hundred rupees. |
| 70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs-port and carried coastwise ; or<br>if any goods which have been brought coastwise are so unladen in any such port ; or<br>if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel, | Chap. XV . | such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees. |
| 71.—If the master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166, | 166 | such master shall be liable to a penalty not exceeding two hundred rupees. |
| 72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular ; or counterfeits, falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark, made or impressed by any officer of Customs in the transaction of any business relating to the Customs ; or<br>being required under this Act to produce any document, refuses or neglects to produce such document ; or<br>being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question, | General . | such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees. |

| Offences | Section of this Act to which offence has reference. | Penalties. |
|---|---|---|
| 73.—If any person on board of any vessel or boat in any customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person, or in his possession, | General . | such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods. |
| 74.—If any officer of Customs requires any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs, | 169 | such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees. |
| 75.—If any officer of Customs, or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act, | General . | such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both. |
| 76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the Customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud, | General . | such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both. |
| 77.—If any Police-officer whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a custom-house, neglects so to do, | 180 | such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees. |
| 78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person, | General . | such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both. |
| 79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods, or shows any samples delivered to him in such capacity, or | 195 | he shall be liable to a penalty not exceeding one thousand rupees. |

| Offences | Section of this Act to which offence has reference. | Penalties |
|---|---|---|
| if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity, | | |
| 80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned, | 202 | such person shall be liable to a penalty not exceeding five hundred rupees. |

Nothing in the second column of the above schedule shall be deemed to have the force of law.

**168.** The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof. Packages and contents included in confiscation of goods

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act, shall in like manner be liable to confiscation. Also conveyances and animals used in removal.

The confiscation of any vessel under this Act includes her tackle, apparel and furniture. Tackle, &c., included in confiscation of vessels.

## CHAPTER XVII.

### Procedure relating to Offences, Appeals, &c.

**169.** Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel: Power to search on reasonable suspicion.

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

**170.** When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector. Persons may, before search, require to be taken before Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person; but if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

Power to stop vessels, carts, &c., and search for goods on reasonable suspicion.

**171.** Any duly empowered officer of Customs, or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance: provided that he has reason to believe that smuggled goods are contained therein.

Power to issue search-warrants.

**172.** Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to criminal procedure.[a]

Persons reasonably suspected may be arrested.

**173.** Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Persons arrested to be taken to nearest Magistrate or Customs-collector.

**174.** Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

Persons taken before Magistrate may be detained or admitted to bail.

**175.** When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs:

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

Person escaping may be afterwards arrested.

**176.** If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Persons in Her Majesty's Navy, etc., when arrested, to be secured on

**177.** When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine or Marine Survey is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board

[a] See now Act X of 1882.

of such ship until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law. board until warrant procured.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

**178.** Anything liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling. Seizure of things liable to confiscation.

**179.** All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same. Things seized how dealt with.

If there be no such officer at hand, all such things shall be carried to and deposited at the custom-house nearest to the place of seizure.

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs-authority for the deposit of things so seized.

**180.** When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any Police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting. Procedure in respect of things seized on suspicion.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house; and, immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest custom-house, to be there proceeded against according to law.

**181.** When anything is seized, or any person is arrested, under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest. When seizure or arrest is made, reason in writing to be given.

**182.** In every case, except the cases mentioned in section 167, Nos. 26, 72 and 74 to 76 both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty; Adjudication of confiscations and penalties

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(*a*) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;

(*b*) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(*c*) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the Local Government may, from time to time, empower in that behalf in virtue of their office:

Provided that the Local Government may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (*b*) or in clause (*c*) of this section, and may confer on any officer by name, or in virtue of his office, the powers indicated in clauses (*a*), (*b*) or (*c*) of this section.

Option to pay fine in lieu of confiscation.

**183.** Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

On confiscation, property to vest in Her Majesty.

**184.** When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

Levy of penalty for failure to bring-to.

**185.** If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any Customs-port to which such vessel proceeds, or in which she is, and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf.

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *primâ facie* proof of the fact so certified.

Penalty under Act not to interfere with punishment under other law.

**186.** The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Offences not specially provided for how tried.

**187.** All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

Appeal from subordinate to Chief Customs-authority.

**188.** Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by the Local Government.

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

Deposit, pending appeal, of duty demanded.

**189.** Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

Power to remit penalty or confiscation.

**190.** If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such Authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

Revision by Local Government.

**191.** The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

Goods on which penalty incurred not to be removed till payment.

**192.** When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Other goods of person liable to fine or penalty may be detained.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid.

Enforcement of payment of penalty.

**193.** When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

## CHAPTER XVIII.

### MISCELLANEOUS.

Power to open packages and examine goods.

**194.** Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs-port.

Power to take samples of goods.

**195.** The Customs-collector may, on the entry or clearance of any goods, or at any time while such goods are being passed through the custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

Owner to pay expense incidental to

**196.** The unshipping, carrying, shipping and landing of all goods, and the bringing of them to the proper place for examination or weighing,

and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted, compliance with Customs-law.

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

**197.** No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs. No compensation for loss or injury except on proof of neglect or wilful act.

**198.** No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof; or Notice of proceedings.

after the expiration of three months from the accrual of such cause. Limitation.

**199.** The Chief Customs-authority may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorized landing-place or part of the custom-house premises, shall be subject to payment of fees, and the amount of such fees. Wharfage-fees.

**200.** A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector, to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant. Duplicates of documents may be granted on payment of fee.

**201.** Except in the cases provided for by sections 36, 55, 63 and 94, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the custom-house, to be amended. Amendment of documents.

**202.** No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any custom-house, unless such authorization is approved by the Customs-collector. Custom-house agents.

Such officer may require any person so authorized to give a bond with sufficient security, in any sum not exceeding five thousand rupees, for his faithful behaviour as regards the custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, sus-

pend or withdraw such approval; but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

Agent to produce authority if required.

**203.** When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Rules to be notified.

**204.** All rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

Cancellation of notifications.

**205.** Any notification made by any authority under powers conferred by this Act may be cancelled in like manner by the same authority.

Remission of duty and compensation to owner in certain cases.

**206.** If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the Customs-collector shall, with the sanction of the Chief Customs-authority, make due compensation to such owner.

Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

**207.** Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta[a] or the Trustees of the Port of Bombay[b] respectively.

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[a] See Bengal Acts V of 1870, VII of 1871, III of 1872, IV of 1880, I of 1881 and II of 1883.

[b] See Bombay Acts VI of 1879, I and III of 1881, and III and VI of 1883.

## SCHEDULE.

### PART I.

ACTS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| XXI of 1856 ... | An Act to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal. | Section 8.<br>Sections 10 to 15, both inclusive, the last sentence of section 16 and the form of bond annexed to the Act. |
| VI of 1863 ... | An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India. | The whole. |
| X of 1868 ... | An Act to amend the Consolidated Customs Act. | The whole. |
| XVII of 1869 .. | An Act to shorten the time for landing cargo. | The whole. |
| XIV of 1871 ... | An Act for the further amendment of the consolidated Customs Act. | The whole. |
| VI of 1873 | An Act to amend the law relating to the Transhipment of goods imported by steamer, and for other purposes. | The whole. |
| XVI of 1875 | An Act to amend the law relating to Customs Duties, and for other purposes. | Sections 5, 6, 7 and 12. |

### PART II.

### FORMS.

### A.

### FORM OF BOND FOR IMPORT-DUTY.

(*See section 92.*)

BOND.

No. 18

We, *A. B.*,

now of

; and *C D.*,

of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees

to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

( *date* )

(*Signed*)

The above bounden having applied to the officer in charge of the custom-house at for and obtained permission to lodge in the warehouse for a period of the following goods, that is to say—
imported by sea from on board of the ship and entered in the custom-house books as No. of the Register of Goods imported by sea;

The condition of this bond is, that;

If the or their legal representatives, shall observe all the rules prescribed in The Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof;

And if the said or their legal representatives, shall pay to the officer in charge of the custom-house at the port of all dues, whether customs-duties, warehouse-dues, rent or other lawful charges, which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within

from the date of this bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from date of demand thereof being made in writing by the said officer in charge of the custom-house;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home-consumption or re-exportation by sea, the full amount of all customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

( *date* )

(*Signed*) ( )

## B.

## FORM OF BONDED WAREHOUSE WARRANT.

(*See section 96.*)

I do hereby certify that have deposited in the warehouse of the undermentioned goods , which goods, the engage on demand, after payment of rent and incidental charges and Government dues or customs chargeable thereon, to deliver to the said or their assigns, or to the holder of this warrant, to whom it may be transferred by endorsement.

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## C.

## FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY.

(*See sections 144 and 152.*)

We,

are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives;

dated this day of 18

(*Signed*)

( )

The above bounden being indebted to Her Majesty's Secretary of State for India in Council in the sum of Government rupees , being the amount of duty payable at the rate of rupees per imperial gallon London proof, for gallons of (*or* for gallons of proof spirit used in the preparation of dozens of bottles, *or* gallons of cordials and liquors, as specified in the annexed schedule) manufactured at which the said have been allowed to remove thence for exportation by sea, subject to the provisions of The Sea Customs Act, 1878, without having paid such duty.

The condition of this obligation is, that if the above bounden or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Secretary of State in Council duty at the rate of rupee per

imperial gallon of proof spirit for all or any portion of the abovementioned which shall not have been then exported by sea to a Foreign port, subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date

*If the bond be for cordials and other liquors under section 152, add—*

*Schedule.*

| Description of cordials and liquors. | Quantity in bottles or gallons. | Quantity of proof spirit. |
|---|---|---|
| 1 | 2 | 3 |

# THE INDIAN ARMS ACT, 1878.

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THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

## ACT No. XI OF 1878.

*Received the Governor General's assent on the 15th March, 1878.*

# An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.[a]

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

### *I.—Preliminary.*

Short title. Local extent. 1. This Act may be called "The Indian Arms Act, 1878;" and it extends to the whole of British India.[b]

Savings. But nothing herein contained shall apply to—

(*a*) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer. XX of 1869.

Commencement. 2. This Act shall come into force[c] on such day as the Governor General in Council by notification in the *Gazette of India* appoints.

Repeal of enactments. 3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed shall be deemed to be respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which

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[a] A license granted under the Indian Explosives Act, 1884, for the manufacture, possession, sale, transport or importation of an explosive may be given the effect of a like license granted under this Act,—see Act IV of 1884, section 15.

[b] The Act has been declared under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, in the Chutiá Nágpur Division, *viz.*, the Districts of Hazáribágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhum and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[c] Came into force from 1st October, 1878,—see *Gazette of India*, 29th June, 1878, Part I, page 389.

they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force,[a] and shall then cease to have effect.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

"Cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

"Arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"Ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, guncotton, dynamite, lithofracteur and other explosive or fulminating material, gunflints, gunwads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre:

"Military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the *Gazette of India*, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section:

"License" means a license granted under this Act, and "licensed" means holding such license.

### *II.—Manufacture, Conversion and Sale.*

Unlicensed manufacture, conversion and sale prohibited.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to

[a] 1st October, 1878.

the District Magistrate,[a] or to the officer in charge of the nearest Police-station, notice of the sale and of the purchaser's name and address.

### *III.—Import, Export and Transport.*

Unlicensed importation and exportation prohibited.

**6.** No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license.

Importation and exportation of arms and ammunition for private use.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

EXPLANATION.—Arms, ammunition and military stores taken from one part of British India to another, by sea or across intervening territory not being part of British India, are taken out of and brought into British India within the meaning of this section.

Sanction of Local Government required to warehousing of arms, &c.

**7.** Notwithstanding anything contained in the Sea Customs Act, 1878, VIII of 1878. no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

Levy of duties on arms, &c., imported by sea.

**8.** [*Repealed by Act XI of 1882, section 2 and Schedule 1.*]

Power to impose duty on import by land.

**9.** The Governor General in Council may from time to time, by notification in the *Gazette of India*, direct that duties not exceeding those specified in the second schedule hereto annexed shall be levied upon any articles mentioned in that schedule and brought by land into any part of British India, and may in like manner cancel any such notification.[b]

Power to prohibit transport.

**10.** The Governor General in Council may from time to time, by notification in the *Gazette of India*,—

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent and in the manner permitted by such license, and

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[a] See Act X of 1882, section 3.

[b] Compare section 5 of Act XI of 1882.

(*b*) cancel any such notification.

EXPLANATION.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section. Transhipment of arms.

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and Foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office. Power to establish searching-stations.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him. Arrest of persons conveying arms, &c., under suspicious circumstances.

Any person so apprehended, and any arms, ammunition or military stores so taken, by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer. Procedure where arrest made by person not a Magistrate or a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by, or delivered to, any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

### *IV.—Going armed and possessing Arms, &c.*

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby. Prohibition of going armed without license.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby. Unlicensed possession of fire-arms, &c.

During the three months next following the date on which this Act comes into force,[a] nothing in the former part of this section shall apply to the posses-

[a] 1st October, 1878.

sion by any person of any fire-arms, ammunition or military stores in any place to which section 32, clause 2, of Act No. XXXI of 1860[a] does not apply at such date. XXXI of 1860.

Any person having within the said period of three months any fire-arms, ammunition or military stores in his possession in any such place may, and any person having at the expiry of the same period any fire-arms, ammunition or military stores in his possession in any such place without a license, shall deposit the same with the officer in charge of the nearest Police-station.

If the owner of anything deposited under this section does not, within the year next following the date on which this Act comes into force,[b] obtain a license authorizing him to possess such thing and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

Possession of arms of any description without license prohibited in certain places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860[a] applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section, no person shall have in his possession any arms of any description except under a license and in the manner and to the extent permitted thereby. XXXI of 1860.

Arms of which possession has become unlawful to be deposited at Police-station.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest Police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

### *V.—Licenses.*

Power to make rules as to licenses.

17. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2 of Act No. XXXI[a] of 1860. XXXI of 1860.

[a] Repealed by this Act,—see section 3 and Schedule I.

[b] 1st October, 1878.

1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered, and

(*f*) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license.

**18.** Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any District Magistrate,[a] or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

## *VI.—Penalties.*

For breach of sections 5, 6, 10 and 13 to 17.

**19.** Whoever commits any of the following offences (namely) :—

(*a*) manufactures, converts or sells, or keeps, offers or exposes for sale,

[a] See Act X of 1882, section 3.

any arms, ammunition or military stores in contravention of the provisions of section 5;

(*b*) fails to give notice as required by the same section;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10;

(*e*) goes armed in contravention of the provisions of section 13;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15;

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep;

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*e*), he is required to exhibit; or

(*i*) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

For secret breaches of sections 5, 6, 10, 14 and 15.

**20.** Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, XLV of 1860 or to any person employed upon a Railway or to the servant of any public carrier,

For concealing arms, &c.

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

For breach of license.

**21.** Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, &c., from unlicensed person.

**22.** Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same; or

For deliver-

delivers any arms, ammunition or military stores into the possession of any

person without previously ascertaining that such person is legally authorized to possess the same,

ing arms, &c., to person not authorized to possess them.

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**23.** Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rule.

**24.** When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

Power to confiscate.

## *VII.—Miscellaneous.*

**25.** Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

Search and seizure by Magistrate.

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

**26.** The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Seizure and detention by Local Government.

**27.** The Governor General in Council may from time to time, by notification published in the *Gazette of India*,—

Power to exempt.

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or with-

draw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(*b*) cancel any such notification, and again subject the persons or things, or the part of British India, comprised therein to the operation of such prohibition or direction.

Information to be given regarding offences.

**28.** Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Sanction required to certain proceedings under section 19, cl. (*f*).

**29.** Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date on which this Act comes into force[a] in any province, district or place to which section 32, clause 2, of Act XXXI of 1860[b] applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the District Magistrate,[c] or, in a Presidency-town, of the Commissioner of Police. XXXI of 1860

Searches in the case of offences against section 19, clause (*f*), how conducted.

**30.** Where a search is to be made under the Code of Criminal Procedure[d] in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise. X of 1882.

Operation of other laws not barred.

**31.** Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

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[a] 1st October, 1878.

[b] Repealed by this Act,—see section 3 and Schedule I.

[c, d] See Act X of 1882, section 3.

Power to take census of fire-arms.

**32.** The Local Government may, from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

**33.** No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

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## THE FIRST SCHEDULE.

### ENACTMENTS REPEALED.

(*See section 3.*)

| Number and year. | Title | Extent of repeal. |
|---|---|---|
| XVIII of 1841 | An Act for consolidating and amending the enactments concerning the exportation of Military Stores. | So much as has not been repealed. |
| XXX of 1854 | An Act to provide for the levy of duties of customs in the Arakan, Pegu, Martaban and Tenasserim Provinces. | In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11. |
| XXXI of 1860 | An Act relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases. | So much as has not been repealed. |

## THE FIRST SCHEDULE—*continued.*

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| VI of 1866 | An Act to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases), and for other purposes. | The whole. |
| III of 1872 | The Santhál Parganas Settlement Regulation. | So much of the schedule as relates to Act XXXI of 1860 and Act VI of 1866. |
| IX of 1874 | The Arakan Hills District Laws Regulation, 1874. | So much of the schedule as relates to Act XVIII of 1841. |
| XV of 1874 | An Act for declaring the local extent of certain enactments, and for other purposes. | So much of the first schedule as relates to Act XVIII of 1841. |

## THE SECOND SCHEDULE.[a]

(*See section 8* [b].)

| | Rs. | A. |
|---|---|---|
| (1) Fire-arms other than pistols, for each ... ... ... ... .. .. | 50 | |
| (2) Barrels for the same, whether single or double, for each ... ... ... | 30 | |
| (3) Pistols, for each ... ... ... ... ... ... ... ... ... | 15 | |
| (4) Barrels for the same, whether single or double, for each ... ... ... | 10 | |
| (5) Springs used for fire-arms, for each ... ... ... ... ... ... | 8 | |
| (6) Gun-stocks, sights, blocks and rollers, for each ... ... ... ... | 5 | |
| (7) Revolver-breeches, for each cartridge which they will carry ... ... ... | 2 | 8 |
| (8) Extractors, nippers, heel-plates, pins, screws, tangs, bolts, thumb-pieces, triggers, trigger-guards, hammers, pistons, plates, and all other parts of a fire-arm not herein otherwise provided for, and all tools used for cleaning or putting together or loading the same, for each ... ... ... ... | 1 | 8 |
| (9) Machines for making or loading or closing cartridges, for each ... ... | 10 | |
| (10) Machines for capping cartridges, for each ... ... ... ... ... | 2 | 8 |

EXCEPTION.—Articles falling under the 5th, 6th, 8th, 9th or 10th head of this schedule, when they appertain to a fire-arm falling under the 1st or 3rd head and are fitted into the same case with such fire-arm.

[a] Though Act XI of 1882 purported to repeal this schedule entirely, it would appear to have been intended to repeal it only so far as section 8 of this Act is concerned. As the schedule is also referred to in section 9 of this Act, it may apparently be treated as still in force for the purposes of that section.

[b] *Sic.* Read "sections 8 and 9."

# THE STAMP ACT, 1879.

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## ACT No. I OF 1879.

*Received the Governor General's assent on the 17th January, 1879.*

An Act to consolidate and amend the law relating to Stamps.

## CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Stamp Act, 1879":

Local extent. It extends to the whole of British India;[a]

[a] The Act has been declared under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, *viz*, the Districts of Hazáríbágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, pages 507 to 510.

And it shall come into force on the first day of April, 1879. Commencement.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act. Repeal of enactments.

XVIII of 1869.

XVIII of 1869.

3. In this Act, unless there is something repugnant in the subject or context— Interpretation-clause.

(1) "Banker" includes a bank and any person acting as a banker : "Banker."

(2) "Bill of exchange" includes a hundí : "Bill of exchange."

(3) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated : "Bill of lading."

(4) "Bond" means— "Bond."

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another:

(5) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed : "Chargeable."

(6) "Cheque" means a bill of exchange drawn on a banker and payable on demand : "Cheque."

(7) "Chief Controlling Revenue-authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue ; in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner; in Sind, the Commissioner; in the Panjáb, the Financial Commissioner ; and elsewhere, the Local Govern- "Chief Controlling Revenue-authority."

ment or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Collector." (8) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Conveyance." (9) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale:

"Duly stamped." (10) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

"Instrument of partition." (11) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority:

"Lease." (12) "Lease" means a lease of immoveable property, and includes also,—

(*a*) a pattá,

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

"Mortgage-deed." (13) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property:

"Paper." (14) "Paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance." (15) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event:

It includes a life-policy:

"Power-of- (16) "Power-of-attorney" means any instrument (not chargeable with a

VII of 1870. fee under the law relating to court-fees[a] for the time being in force) empowering a specified person to act in the stead of the person executing it: "attorney."

(17) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person: "Receipt."

(18) "Schedule" means a schedule to this Act annexed: "Schedule."

(19) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made— "Settlement."

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition:

(20) "Vessel" means anything made for the conveyance by water of human beings or property: "Vessel."

(21) "Written" and "writing" include every mode in which words or figures can be expressed upon paper. "Written:" "writing."

4. The schedules and everything therein contained shall be read and construed as part of this Act. Schedules to be read as part of Act.

## CHAPTER II.

### STAMP-DUTIES.

### *A.—Of the Liability of Instruments to Duty.*

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say— Instruments chargeable with duty.

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, 1879;

[a] See Act VII of 1870.

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

Several instruments used in single transactions.

**6.** Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

Instruments relating to several distinct matters.

**7.** Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments coming within several descriptions in Schedule I.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Power to reduce or remit duty.

**8.** The Governor General in Council may, by order published in the *Gazette of India*,—

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) cancel or vary such order to the extent of the powers hereby given.

*E.—Of Stamps and the Mode of using them.*

Duties how to be paid.

**9.** Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(*a*) according to the provisions herein contained, or

(*b*) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundís—the size of the paper on which they are written.

Use of adhesive stamps.

**10.** The following instruments may be stamped with adhesive stamps, namely :—

(*a*) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India;

(*c*) entry as an advocate, vakíl or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares of public Companies and Associations.

Cancellation of adhesive stamps.

**11.** Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again,

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

How instruments stamped with impressed stamps are to be written.

**12.** Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Only one instrument to

**13.** No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has

be on same stamp.

already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 12 or 13 deemed unstamped.

**14.** Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped.

Denoting duty.

**15.** Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

*C.—Of the Time of stamping Instruments.*

Instruments executed in British India.

**16.** All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments other than bills, cheques and notes executed out of British India.

**17.** Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Bills, cheques and notes drawn out of British India.

**18.** The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 11, and such holder has no reason to believe that such stamp was affixed or cancelled other-

wise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

### *D.—Of Valuations for Duty.*

Conversion of amount expressed in certain currencies.

**19.** Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale :—

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

Conversion of amount expressed in other foreign currencies.

**20.** Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Stock and marketable securities how to be valued.

**21.** Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Effect of statement of rate of exchange or average price.

**22.** Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Instruments reserving interest.

**23.** Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

**24.** Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

Valuation in

**25.** Where an instrument is executed to secure the payment of an annuity

case of annuity, &c.

or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

Stamp where value of subject-matter is indeterminate.

**26.** Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Facts affecting duty to be set forth in instrument.

**27.** The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Direction as to duty in case of certain conveyances.

**28.** (*a*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(*b*) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with

*ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*c*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(*e*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or, where such duty would exceed five rupees, with a duty of five rupees.

### *E.—Duty by whom payable.*

Duties by whom payable.

**29.** In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and 60 (*a*) and (*b*) of the first schedule—by the person drawing, making or executing such instrument:

(*b*) in the case of a policy of insurance—by the insured:

(*c*) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or, when the partition is made in execution of an order passed by a Revenue-authority, in such proportion as such Authority directs:

(*f*) in the case of an instrument of exchange—by the parties in equal shares; and

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

## CHAPTER III.

### ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp.

**30.** When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable;

Collector may call for abstract and evidence.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proviso.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector.

**31.** When an instrument brought to the Collector under section 30 is in his opinion one of a description chargeable with duty, and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section 30, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be, and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under section 30 how made.

**32.** Every payment of a fee under section 30 shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

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## CHAPTER IV.

### INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

**33.** Every person having by law or consent of parties authority to receive evidence, and

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure:[a] X of 1882.

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, &c.

**34.** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Proviso.

Provided that—

Instruments admissible on payment of duty and penalty.

*1st*, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

and in certain criminal proceedings.

*2nd*, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure;[b] X of 1882.

Admission of instrument not to be questioned.

*3rd*, when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

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[a, b] See Act X of 1882, section 3.

Instruments impounded how dealt with.

**35.** When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

Collector's power to refund penalty paid under section 35, 1st para.

**36.** When a copy of an instrument is sent to a Collector under the first paragraph of section 35, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, he may refund the whole penalty so paid.

Collector's power to stamp instruments impounded.

**37.** When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall adopt the following procedure:—

(*a*) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct;

(*b*) if the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees, and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Instruments unduly stamped by accident.

**38.** If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 37, receive such amount and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to a bill of exchange or promissory note.

Endorsement of instruments on which duty has been paid under section 34, 37 or 38.

**39.** When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 37 or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate:

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.[a] XIV of 1882.

Prosecution for offence against stamp law.

**40.** The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

Proviso.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Col-

[a] See Act XIV of 1882, section 3.

lector that the offence was committed with an intention of evading payment of the proper duty.

Persons paying duty or penalty may recover same in certain cases.

**41.** When any duty or penalty has been paid, under section 34, section 37 or section 38, by any person in respect of an instrument, and, by agreement, or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section 39 shall be conclusive evidence of the matters therein certified.

Remission of penalty paid under section 34 or 37.

**42.** When any penalty is paid under section 34 or 37, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Non-liability for loss of instruments sent under section 35.

**43.** If any instrument sent to a Collector under the second paragraph of section 35 be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Copy may be made of instruments so sent.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Power of payee to stamp bills, notes and cheques received by him unstamped.

**44.** When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

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## CHAPTER V.

### Reference and Revision.

Procedure where Collector feels

**45.** If any Collector acting under section 30, section 37 or section 38 feels doubt as to the amount of duty with which any instrument is chargeable, he

doubt as to duty chargeable.

may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Reference by Revenue-authority to High Court.

**46.** The Chief Controlling Revenue-authority may state any case referred to it under section 45 or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

Power of Court to call for further particulars.

**47.** If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Procedure in disposing of reference.

**48.** The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

**49.** If any Court other than a Court mentioned in section 46 feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section 34, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would under section 46 refer the same; and such Court shall deal with the case

as if it had been referred under section 46, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

**50.** When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 34 is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

## CHAPTER VI.

### ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

Allowance for spoiled stamps.

**51.** Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(*a*) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*) the stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon:

(*c*) the stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee; provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note:

(*d*) the stamp used for any of the following instruments, that is to say—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) an instrument executed by any party thereto, but which by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed:

(4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument,—

(*a*) such instrument is given up to be cancelled:

(*b*) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Allowance for misused stamps.

**52.** When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section 14 owing to such instrument having been written in contravention of the provisions of section 12, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being restamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance under sections 51 and 52 how to be made.

**53.** In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or, (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or, (*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for stamps not required for use.

**54.** When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee, or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

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## CHAPTER VII.

### Supplemental Provisions.

Powers to make rules relating to sale of stamps.

**55.** The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

**56.** The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Certain powers exercisable from time to time.

**57.** All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Publication of rules.

All rules made under this Act, other than rules made under section 55, shall be published in the *Gazette of India*, and all rules made under section 55 shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Obligation to give receipt in certain cases.

**58.** Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Saving as to Court-fees.

VII of 1870.

**59.** Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.[a]

Act to be translated, indexed and sold cheaply.

**60.** Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

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## CHAPTER VIII.

### Criminal Offences and Procedure.

Penalty for executing, &c., instrument not duly stamped.

**61.** Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

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[a] See Act VII of 1870.

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37 or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

**62.** Any person required by section 11 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

**63.** Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts.

**64.** Any person who, being required under section 58 to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy,

**65.** Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

or making, &c., any policy, not duly stamped.

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

**66.** Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for post-dating bills, &c., and for other devices to defraud the revenue.

**67.** Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

shall be punished with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

**68.** Any person appointed to sell stamps who disobeys any rule made under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Institution and conduct of prosecutions.

**69.** No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869,[a] or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

XVIII of 1869.

The Chief Controlling Revenue-authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

Jurisdiction of Magistrates.

**70.** No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Place of trial.

**71.** Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.[b]

X of 1882.

Operation of other laws not barred.

**72.** Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Provided that no person shall be punished twice for the same offence.

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[a] Repealed by this Act,—see section 2 and Schedule III.

[b] See now Act X of 1882.

## SCHEDULE I.

### STAMP-DUTY ON INSTRUMENTS.

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT | | PROPER STAMP-DUTY. |
|---|---|---|
| **1. ACKNOWLEDGMENT** of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession ... ... ... ... | | One anna. |
| **2. ADMINISTRATION-BOND** ... ... ... ... ... | | The same duty as a Security-Bond (No. 14). |
| **ADOPTION-DEED** ... | See *Instrument, No. 38.* | |
| **3. AFFIDAVIT** or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath ... ... ... ... See *Exemptions, Schedule II (No. 1).* | | One rupee. |
| **4. AGREEMENT TO LEASE** ... ... ... ... ... | | The same duty as a Lease (No. 39). |
| **5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT.** See *Exemptions, Schedule II (No. 2).* | (*a*) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange ... ... | One anna. |
| | (*b*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right [a] so relinquished ... | Four annas. |
| | (*c*) If not otherwise provided for by this Act ... | Eight annas. |
| **6. APPOINTMENT,** in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will ... ... ... ... | | Fifteen rupees. |

[a] *Sic.* Read "rights."

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| **7. APPRAISEMENT** or valuation made otherwise than under an order of the Court in the course of a suit ... ... ... ... ... | | The same duty as an Award (No. 10). |
| See *Exemptions, Schedule II (Nos. 3 & 4).* | | |
| **APPRENTICESHIP-DEED** ... ... | See *Instrument, No. 31.* | |
| **8. ARTICLES OF ASSOCIATION OF A COMPANY** ... ... ... ... | | Twenty-five rupees. |
| **9. ARTICLES OF CLERKSHIP** or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court ... ... ... ... | | Two hundred and fifty rupees. |
| **ASSIGNMENT** ... | See *Conveyance, No. 21, and Transfer, No. 60.* | |
| **AUTHORITY TO ADOPT** ... ... | See *Instrument, No. 38.* | |
| **10. AWARD,** that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit ... | (*a*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ... | The same duty as a Bond (No. 13) for such amount. |
| | (*b*) In any other case ... | Five rupees. |
| See *Exemption, Schedule II (No. 6).* | | |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

(*See section 5.*)

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | If drawn singly. | | | If drawn in set of two, for each part of the set. | | | If drawn in set of three, for each part of the set. | |
| | | | Rs. | A. | P. | Rs. | A. | P. | Rs. | A. P. |
| 11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency-note ... ... | (*a*) When payable on demand and the amount exceeds Rs. 20 .. ... | One anna. | | | | | | | | |
| | (*b*) When payable otherwise than on demand, but not more than one year after date or sight. | | | | | | | | | |
| | If the amount of the bill or note does not exceed Rs. 200 | | 0 | 2 | 0 | 0 | 1 | 0 | 0 | 1 0 |
| | If it exceeds 200 and does not exceed 400 | | 0 | 4 | 0 | 0 | 2 | 0 | 0 | 2 0 |
| | „ 400 600 | | 0 | 6 | 0 | 0 | 3 | 0 | 0 | 2 0 |
| | „ 600 1,000 | | 0 | 10 | 0 | 0 | 5 | 0 | 0 | 4 0 |
| | „ 1,000 1,200 | | 0 | 12 | 0 | 0 | 6 | 0 | 0 | 4 0 |
| | „ 1,200 1,600 | | 1 | 0 | 0 | 0 | 8 | 0 | 0 | 6 0 |
| | „ 1,600 2,500 | | 1 | 8 | 0 | 0 | 12 | 0 | 0 | 8 0 |
| | For every Rs. 2,500 or part thereof in excess of Rs. 2,500, up to Rs. 10,000 ... | | 1 | 8 | 0 | 0 | 12 | 0 | 0 | 8 0 |
| | For every Rs 5,000 or part thereof in excess of Rs. 10,000, up to Rs. 30,000 ... | | 3 | 0 | 0 | 1 | 8 | 0 | 1 | 0 0 |
| | And for every Rs. 10,000 or part thereof in excess of Rs. 30,000. ... ... | | 6 | 0 | 0 | 3 | 0 | 0 | 2 | 0 0 |
| | (*c*) When payable at more than one year after date or sight ... ... | The same duty as a Bond (No. 13) for the amount of such bill or note. | | | | | | | | |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | | PROPER STAMP-DUTY. |
|---|---|---|---|
| **12. BILL OF LADING** ... ... ... <br> See *Exemption, Schedule II (No. 7).* | | | Four annas. <br> If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set. |
| **13. BOND** (not otherwise provided for by this Act) ... <br> See *Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 29), Security-Bond (No. 14).* <br> See *Exemptions, Schedule II (No. 8).* | When the amount or value secured does not exceed ... ... | Rs 10 | Two annas. |
| | When such amount or value exceeds Rs. 10, but does not exceed ... | 50 | Four annas. |
| | When such amount or value exceeds Rs. 50, but does not exceed ... | 100 | Eight annas. |
| | and for every Rs. 100 or part thereof in excess of Rs. 100, up to ... | 1,000 | Eight annas. |
| | and for every Rs. 500 or part thereof in excess of | 1,000 | Two rupees eight annas. |
| **14. BOND OR MORTGAGE-DEED** executed by way of security for the due execution of an office, or to account for money received by virtue thereof ... <br> See *Exemptions, Schedule II (Nos. 8 and 12).* | (*a*) When the amount secured does not exceed ... | Rs. 1,000 | The same duty as a Bond (No. 13). |
| | (*b*) In any other case ... | | Five rupees. |
| **15. BOTTOMRY-BOND,** that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage ... ... ... | | | The same duty as a Bond (No. 13). |
| **16. CERTIFICATE OF SALE** granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer ... ... ... ... | | | The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money. |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| **17. CERTIFICATE OR OTHER DOCUMENT** evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association ... ... ... ... | | One anna. |
| **18. CHARTER-PARTY,** that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer ... ... ... ... ... | | One rupee. |
| **19. CHEQUE,** for an amount exceeding twenty rupees . ... ... ... | | One anna. |
| **20. COMPOSITION-DEED,** that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors ... ... ... ... | | Ten rupees. |
| **21. CONVEYANCE,** not being a **TRANSFER** mentioned in No. 60 ... | When the amount of the consideration for such conveyance as set forth therein does not exceed Rs. 50 | Eight annas. |
| | When it exceeds Rs. 50 but does not exceed ... 100 | One rupee. |
| | For every Rs. 100 or part thereof in excess of Rs. 100, up to ... 1,000 | One rupee. |
| | and for every Rs. 500 or part thereof in excess of 1,000 | Five rupees. |

See *Exemptions, Schedule II (Nos. 5 and 17).*

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

(*See section 5.*)

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| **CO-PARTNERSHIP** .. | See *Instrument, No. 32.* | |
| **22. COPY OR EXTRACT,** certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees[a] ... ... | (*a*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ... | Eight annas. |
| | (*b*) In any other case ... | One rupee. |
| *See Exemptions, Schedule II (Nos. 9 and 10).* | | |
| **23. COUNTERPART OR DUPLICATE** of any instrument chargeable with duty, and in respect of which the proper duty has been paid ... | (*a*) If the duty with which the original instrument is chargeable does not exceed one rupee ... | The same duty as is payable on the original. |
| | (*b*) In any other case ... | One rupee. |
| **24. CUSTOMS-BOND** ... | ... ... ... | The same duty as a Security-Bond (No. 14). |
| **25. DECLARATION OF ANY TRUST** of or concerning any property, when made by any writing not being a Will ... | ... ... ... | Fifteen rupees. |
| **26. DELIVERY-ORDER IN RESPECT OF GOODS,** that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees. | ... ... ... | One anna. |
| **DEPOSIT OF TITLE-DEEDS** ... ... | See *Instrument, No. 29.* | |
| **DISSOLUTION OF PARTNERSHIP** ... | See *Instrument, No. 33.* | |
| **DUPLICATE** ... | See *Counterpart, No. 23.* | |

VII of 1870.

[a] See Act VII of 1870.

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| 27. **ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT** in exercise of powers conferred on such Court by letters patent [a] or by the Legal Practitioners' Act, 1884.[a] | In the case of an Advocate or Vakil ... ... | Five hundred rupees. |
| | In the case of an Attorney | Two hundred and fifty rupees. |
| See *Exemptions, Schedule II (No. 11).* | | |
| **EXCHANGE** ... | See *Instrument, No. 35* | |
| **EXTRACT...** ... | See *Copy, No. 22.* | |
| **FURTHER CHARGE** | See *Instrument, No. 30.* | |
| **GIFT** ... ... | See *Instrument, No 36.* | |
| 28. **INDEMNITY-BOND** | ... ... ... ... | The same duty as a Security-Bond (No. 14). |
| **INSPECTORSHIP-DEED** ... ... | See *Composition-deed, No. 20.* | |
| 29. **INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN** made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ... | (*a*) When such loan is re-payable more than three months, but not more than one year, from the date of such instrument. | The same duty as a Bill of Exchange (No. 11 (*b*)) for the amount secured. |
| | (*b*) When such loan is repayable not more than three months from the date of such instrument. | Half the duty payable on a Bill of Exchange (No. 11 (*b*)) for the amount secured. |
| 30. **INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY** ... | (*a*) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule. | The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument. |
| | (*b*) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule. | The same duty as a Bond (No. 13) for the amount secured by such instrument. |
| 31. **INSTRUMENT OF APPRENTICESHIP**, including every writing relating to the service or tuition of any apprentice, clerk or ser- | | |

[a-a] See Act IX of 1884, section 10 (1). For stamp-duties on certificates to practice as a legal practitioner, see Act XVIII of 1879, section 25 and Schedule II.

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | PROPER STAMP-DUTY. |
|---|---|
| vant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule) ... ... ... ... ... ... | Five rupees. |
| See *Exemption, Schedule II (No. 12 (c)).* | |
| **32. INSTRUMENT OF CO-PARTNERSHIP** ... ... ... ... ... ... | Ten rupees. |
| **33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP** ... ... ... ... ... ... | Five rupees. |
| **34. INSTRUMENT OF DIVORCE**, that is to say, any instrument by which any person effects the dissolution of his marriage ... ... ... ... ... ... | One rupee. |
| **35. INSTRUMENT OF EXCHANGE** of any property ... ... ... ... ... ... | The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument. |
| **36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)** ... .. ... ... | The same duty as a Conveyance (No 21) for a consideration equal to the value of the property as set forth in such instrument. |
| **37. INSTRUMENT OF PARTITION** ... ... ... ... ... ... | The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument. |
| **38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT** ... ... ... ... ... ... | Ten rupees. |
| **INSURANCE** ... See *Policy, No. 49.* | |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT | | PROPER STAMP-DUTY. |
|---|---|---|
| **39. LEASE.**<br>See *Agreement to lease* (*No. 4*).<br>See *Exemptions, Schedule II* (*No. 13*). | (*a*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term— | |
| | of less than one year ... | The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease. |
| | of not less than one year, but not more than three years ... | The same duty as a Bond (No. 13) for the average annual rent reserved. |
| | exceeding three years ... | The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved. |
| | (*b*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term ... | The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long. |
| | (*c*) Where the lease is granted for a fine or premium, and where no rent is reserved ... ... | The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease. |
| | (*d*) Where the lease is granted for a fine or premium in addition to rent reserved ... ... | The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | PROPER STAMP-DUTY. |
|---|---|
| | lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered:<br>Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas. |
| **40. LETTER OF ALLOTMENT OF SHARES** in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company ... .. ... | One anna. |
| **41. LETTER OF CREDIT,** that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ... ... ... ... ... | One anna. |
| **42. LETTER OF LICENSE,** that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion ... ... ... ... ... | Ten rupees. |
| **43. MEMORANDUM OF ASSOCIATION OF A COMPANY** .. ... ... ... | Fifteen rupees. |
| **44. MORTGAGE-DEED** not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule ...<br>See *Exemptions, Schedule II* [*No. 12 and No. 14 (b)*]. | (*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ... ... — The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed. |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

(*See section 5.*)

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| **44. MORTGAGE-DEED** not provided for by No. 14, No. 15, No 29 or No. 55 of this schedule—*contd.* See *Exemptions, Schedule II* [*No. 12 and No. 14* (*b*)]. | (*b*) When at the time of execution possession is not given or agreed to be given as aforesaid ... ... | The same duty as a Bond (No. 13) for the amount secured by such deed. |
| **45. NOTARIAL ACT**, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public ... ... ... ... | | One rupee. |
| **46. NOTE OR MEMORANDUM** sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees ... ... ... ... ... | | One anna. |
| **47. NOTE OF PROTEST BY THE MASTER OF A SHIP** ... ... ... ... | | Eight annas. |
| **PARTITION** ... | See *Instrument, No. 37.* | |
| **PARTNERSHIP** ... | See *Instrument, Nos. 32 and 33.* | |
| **48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION**, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India [a] ... ... ... | | One hundred rupees. |

[a] See Act XV of 1859, sections 1 and 4.

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. | |
|---|---|---|---|
| | | If drawn singly. | If drawn in duplicate, for each part. |
| **49. POLICY OF INSURANCE** ... ... | (*a*) In the case of Sea-insurance— | Rs. A. P. | Rs. A. P. |
| | When the amount insured does not exceed Rs. 1,000 ... | 0 4 0 | 0 2 0 |
| See *Exemption, Schedule II* [*No. 14* (*a*)]. | And for every further sum of Rs. 1,000 or part thereof in excess of 1,000 ... | 0 4 0 | 0 2 0 |
| | (*b*) In the case of any other insurance— | | |
| | When the amount insured does not exceed 1,000 ... | 0 6 0 | 0 3 0 |
| | And for every further sum of Rs. 1,000 or part thereof in excess of 1,000 ... | 0 6 0 | 0 3 0 |
| **50. POWER-OF-ATTORNEY**, not being a proxy chargeable under No. 51. | (*a*) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction ... | Eight annas. | |
| | (*b*) When authorizing one person or more to act in a single transaction other than that mentioned in (*a*) | One rupee. | |
| | (*c*) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ... | Five rupees. | |
| | (*d*) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally. ... | Ten rupees. | |
| | (*e*) In any other case ... | One rupee for each person authorized. | |
| *Explanation.*—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person. | | | |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

(*See section 5.*)

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| **PROMISSORY NOTE** | See *Bill of Exchange, No. 11.* | |
| **PROTEST**, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ... ... | See *Notarial Act, No. 45.* | |
| **PROTEST BY THE MASTER OF A SHIP**, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such... | See *Notarial Act, No. 45.* | |
| 51. **PROXY** empowering any person to vote at any one meeting of— | | |
| (*a*) Members of a Company whose stock or funds is or are divided into shares and transferable: ... ... | ... ... ... | One anna. |
| (*b*) Municipal Commissioners: ... ... | | |
| (*c*) Proprietors, Members or Contributors to the funds of any Institution | | |
| 52. **RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES** See *Exemptions, Schedule II* (*No. 15*). | ... ... | One anna. |

## SCHEDULE I—*continued.*

### STAMP-DUTY ON INSTRUMENTS—*continued.*

*(See section 5.)*

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. |
|---|---|---|
| 53. **RE-CONVEYANCE OF MORTGAGED PROPERTY** ... | (*a*) If the consideration for which the property was mortgaged does not exceed ... Rs. 1,000 | The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance. |
| | (*b*) In any other case .. | Ten rupees. |
| 54. **RELEASE**, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ... | (*a*) If the amount or value of the claim does not exceed ... Rs. 1,000 | The same duty as a Bond (No. 13) for such amount or value as set forth in the release. |
| | (*b*) In any other case ... | Five rupees. |
| 55. **RESPONDENTIA-BOND**, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination ... ... ... ... | | The same duty as a Bond (No. 13). |
| 56. **REVOCATION OF ANY TRUST** of or concerning any property by any instrument other than a Will ... ... ... ... | | Ten rupees. |
| 57. **SETTLEMENT** ... ... ... ... | | The same duty as a Bond (No 13) for a sum equal to the amount or value of the property settled as set forth in such settlement. |
| 58. **SHIPPING-ORDER** for or relating to the conveyance of goods on board of any vessel ... ... ... ... | | One anna. |
| **SPECIFICATION** ... | See *Petition, No. 48.* | |

## SCHEDULE I—*concluded.*

### STAMP-DUTY ON INSTRUMENTS—*concluded.*

(*See section 5.*)

| DESCRIPTION OF INSTRUMENT. | | PROPER STAMP-DUTY. | |
|---|---|---|---|
| **59. SURRENDER OF LEASE.**<br>See *Exemption, Schedule II* (*No. 16*). | (*a*) When the duty with which the lease is chargeable does not exceed five rupees ... ... | The duty with which such lease is chargeable. | |
| | (*b*) In any other case ... | Five rupees. | |
| **60. TRANSFER** ...<br>See *Exemptions, Schedule II* (*No. 17*). | (*a*) Of shares in a Company or Association ... | One-quarter of the duty payable on a Conveyance (No. 21). | |
| | (*b*) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance—<br>1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees ... | The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable. | |
| | 2. In any other case ... | Five rupees. | |
| | (*c*) Of any property under the Administrator General's Act, 1874, section 31 ... | Ten rupees. | II of 1874. |
| | (*d*) Of any trust-property from one trustee to another trustee without consideration ... ... | Five rupees. | |
| **TRUST** ... ... | See *Declaration, No. 25. Revocation, No. 56.* | | |
| **VALUATION** ... | See *Appraisement, No. 7.* | | |
| **61. WARRANT FOR GOODS**, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be ... ... ... ... | | Four annas. | |

## SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—

V of 1869. (*a*) as a condition of enlistment under the Indian Articles of War;

(*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or

(*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.

2. Agreement or memorandum of agreement—

(*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of Schedule I;

(*b*) for service in British Burma under the Chief Commissioner of that Province, entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner;[a]

(*c*) made by raiyats for the cultivation of the poppy for Government;

(*d*) made in the form of tenders to the Government of India for or relating to any loan;

(*e*) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay

Bo. I of 1865. Act I of 1865;

IX of 1874. (*f*) made under the European Vagrancy Act, 1874, section 17.

3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

XX of 1847. 5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.

Bo VI of 1873. Bo. III of 1874. 6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.

XII of 1875. 7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

[a] See Act III of 1876. This Act has been repealed by Act VII of 1883.

SCHEDULE II—*continued.*

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—*continued.*

8. Bond when executed by—
   (*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;
   (*b*) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act; Ben. III of 1876.
   (*c*) any person, for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.[a] VII of 1871.
11. Entry—
   (*a*) of an advocate, vakíl or attorney on the roll of any High Court, when he has previously been enrolled in a High Court;[b]
   (*b*) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.
12. Instruments—
   (*a*) executed by persons taking advances under the Land Improvement Act, 1871,[c] or by their sureties, as security for the repayment of such advances; XXVI of 1871.
   (*b*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;
   (*c*) of apprenticeship, executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity. XIX of 1850
13. Leases and counterparts—
   (*a*) Leases of fisheries granted under the Burma Fisheries Act, 1875; VII of 1875.

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[a] This Act has been repealed by Act XXI of 1883, which contains no provision for a copy of the instrument of registration being furnished to emigrants. Section 37 of that Act provides only for copy of the agreement to emigrate being furnished.

[b] Certain words which followed these were repealed by Act IX of 1884, section 10 (2).

[c] or, where the Land Improvement Loans Act, 1883, is in force, under that Act,—see Act XIX of 1883, sections 1 and 2.

## SCHEDULE II—*continued.*

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—*continued.*

13. Leases and counterparts, *contd.*—

(*b*) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees;

(*c*) Counterpart of any lease granted to a cultivator.

14. Letter—

(*a*) of cover or engagement to issue a policy of insurance:

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned;

(*b*) of hypothecation accompanying a bill of exchange.

15. Receipt—

(*a*) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;

(*b*) for any payment of money without consideration;

(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;

(*d*) for pay, by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;

(*e*) for pensions or allowances, by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;

(*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;

(*g*) given by a headman or lambardár for land-revenue or taxes collected by him;

## SCHEDULE II—*concluded.*

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—*concluded.*

15. Receipt, *contd.*—

(*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

(*a*) of a bill of exchange, cheque or promissory note;

(*b*) of a bill of lading;

(*c*) of a policy of insurance;

(*d*) of mortgages of rates and taxes authorized by any Act for the time being in force in British India;

(*e*) of securities of the Government of India;

(*f*) of a warrant for goods (No. 61 of Schedule I).

*General Exemption.*

18. Any instrument executed by, or on behalf of, or in favour of, Government, in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

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## SCHEDULE III.

ACTS REPEALED.

| Number and year. | Subject or short title. | Extent of repeal. |
|---|---|---|
| XX of 1847 ... ... | Copyright ... ... | In section 5, the words "without being subject to any stamp or duty." |
| X of 1866 .. ... | The Indian Companies Act. | In section 11, the words "shall bear the same stamp as if it were a deed, and". |

SCHEDULE III—*contd.*

ACTS REPEALED—*contd.*

| Number and year. | Subject or short title. | Extent of repeal. |
|---|---|---|
| X of 1866—*contd.* | | In section 16, the words "they shall bear the same stamp as if they were contained in a deed". |
| XVIII of 1869 ... ... | The General Stamp Act ... | The whole. |
| VII of 1871 .. . | The Indian Emigration Act. | In sections 27 and 29, the words "which shall not require a stamp". |
| XIX of 1873 ... ... | The North-Western Provinces Land-Revenue Act, 1873. | In section 183, the words "stamped or". |
| II of 1874 ... .. | The Administrator General's Act. | In section 31, the words "bearing a stamp of ten rupees and". |
| IX of 1874 ... .. | The European Vagrancy Act. | In section 17, the words "may be on unstamped paper and". |
| XV of 1876 ... ... | Bombay Municipal Debentures. | In section 2, the words "and no such indorsement shall be chargeable with any stamp-duty". |

## ACT No. III OF 1879.

*Received the Governor General's assent on the 8th March, 1879.*

## An Act to authorize the Destruction of Useless Records.

Preamble. WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

Short title. Local extent. Commencement. 1. This Act may be called "The Destruction of Records Act, 1879": it extends to the whole of British India;[a] and it shall come into force at once.

Power to High Court to make rules for disposal of records, &c. 2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belong-

[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, in the Chutiá Nágpur Division, *viz.*:—
the Districts of Hazáríbágh, Lohardága and Mánnbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

ing to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of—

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one, 11 & 12 Vic., c. 21.

(*b*) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-authority.

4. The Chief Controlling Revenue-authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-authority.

Bar of suits.

Interpretation-clause.

7. In this Act "Chief Controlling Revenue-authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces—the Board of Revenue: in the Presidency of Bombay, outside

Sindh and the limits of the town of Bombay—a Revenue Commissioner: in Sindh—the Commissioner: in the Panjáb—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

Saving of documents kept under provision of law.

**8.** Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Repeal of enactments.

**9.** The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

## THE SCHEDULE.

(*See section 9.*)

### ENACTMENTS REPEALED.

(*a*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year. | Subject or short title. | Extent of repeal. |
|---|---|---|
| XX of 1875 ... | The Central Provinces Laws Act, 1875. | In section 8, clause (*c*), the last twenty-one words. |
| XVIII of 1876 ... | The Oudh Laws Act, 1876... ... | In section 39, clause (*e*), the last eighteen words. |

(*b*) ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

| Number and year. | Subject or short title. | Extent of repeal. |
|---|---|---|
| VI of 1865 ... | To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency. | The whole. |
| V of 1869 ... | To authorize the destruction of Useless Records in the Courts of the Province of Sindh. | The whole |

(*c*) REGULATION UNDER 33 VIC., C. 3.

| Number and year. | Subject or short title. | Extent of repeal. |
|---|---|---|
| III of 1877 ... | The Ajmer Laws Regulation, 1877. | In section 40, clause (*c*), the last twenty-one words. |

# THE INDIAN RAILWAY ACT, 1879.

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## ACT No. IV OF 1879.

*Received the Governor General's assent on the 13th March, 1879.*

# An Act to consolidate and amend the law relating to Railways in India.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows :— Preamble.

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## CHAPTER I.

### PRELIMINARY.

1. This Act may be called "The Indian Railway Act, 1879": Short title.

It extends to the whole of British India[a] and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty; Local extent.

And it shall come into force on the first day of July, 1879. Commencement.

2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed. Repeal of Acts.

All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.

III of 1865 Nothing in the Carriers Act, 1865, shall apply to carriers by railway.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"Railway" means a Railway for the public conveyance of passengers or goods: "Railway."

It includes—

(*a*) all land within the fences or other boundary-marks prescribed under section 52;

(*b*) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway;

---

[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, *viz.*:—

the Districts of Hazáríbágh, Lohardága, and Mánbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

(*c*) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway;

(*d*) all vessels and rafts used for the purpose of carrying on the traffic of a Railway:

In section 4, "Railway" includes a Railway under construction, and in the remaining part of this section and in the following sections (namely), 6, 8, 16, 25, 30, 33, 34, 40 to 46 (both inclusive), 52 and 53, "Railway" includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods:

"Railway-administration."

"Railway-administration" means, in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual:

"Railway-servant."

"Railway-servant" means any person employed by a Railway-administration to perform any function in connection with a Railway,

and in section 25, last clause, sections 26, 27, 38 and 42, includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-administration.

Right to use locomotives.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

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## CHAPTER II.

### Duties of the Railway-administration.

Railway when to be opened.

[a] 5. A Railway, or portion or extension of, or addition to, a Railway, shall not be opened for the public conveyance of passengers until the Railway-administration has given to the Governor General in Council notice in writing of the intention of opening the same, and until the Governor General in Council has by order sanctioned the opening of the same.

Governor General in Council may appoint Inspecting-officers.

[b] 5A. The Governor General in Council may from time to time appoint, by name or by virtue of their office, officers to be Inspecting-officers under this Act.

Sanction not to be given until after

[c] 5B. (*1*) The sanction referred to in section 5 shall not be given until an officer appointed under section 5A has, after inspection of the Railway, por-

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a, b, c See Act IV of 1883, section 2.

tion, extension or addition, as the case may be, reported to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using it. report by Inspecting-officer.

(*2*) Notwithstanding anything hereinbefore contained, the Governor General in Council may, in any particular case or in any particular class of cases, by special order, confer on any officer appointed under section 5A power to sanction the opening of a Railway, portion, extension or addition, if in the officer's opinion the opening of the same will not be attended with danger to the public using it.

(*3*) In such case it shall not be necessary to make the report required by sub-section (*1*); but the Governor General in Council may by order cancel the sanction given under sub-section (*2*), or direct that the sanction shall be subject to such conditions as he thinks fit.

(*4*) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council or the officer appointed under section 5A, as the case may be, thinks necessary for the safety of the public.

(*5*) When sanction for the opening of any Railway, or portion or extension of, or addition to, any Railway is given subject to conditions, and the Railway-administration fails or neglects to fulfil, or comply with, those conditions, the sanction shall on the failure or neglect forthwith be deemed to be void, and the Railway, or portion, or extension, or addition, as the case may be, shall not be used unless and until sanction is again obtained under this section for the opening thereof.

When alterations affecting safety of passengers are made in Railway, sanction to be again obtained for opening.

[a] **5C.** If, after a Railway has been opened as hereinbefore provided, any portion of it is so altered by the Railway-administration as to cause danger to, or affect the safety of, passengers carried thereon, the portion so altered shall not be used for the public conveyance of passengers unless and until sanction is obtained, in accordance with the provisions of section 5B, for the opening of it.

Powers of Inspector of Railways.

[b] **5D.** (*1*) Every officer appointed under section 5A shall, for the purpose of the inspection, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, subject to the control of the Governor General in Council, have the following powers, namely:— XLV of 1860.

(*a*) he may enter on and inspect any Railway or portion thereof which has been opened for the public conveyance of passengers, or any rolling-stock used thereon;

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a, b See Act IV of 1883, section 2.

(*b*) he may, by an order in writing under his hand, require the attendance of any Railway-servant whom he thinks fit to call before him and examine for the said purpose, and may require any such servant to answer, or furnish returns regarding, such inquiries for the said purpose as he thinks fit to make;

(*c*) he may require and enforce the production of all books, papers and documents belonging to or in the possession of any Railway-administration which in his opinion are necessary for the said purpose.

(*2*) Every Railway-administration whose Railway or rolling-stock is being inspected under this Act shall afford all reasonable facilities for making the inspection to the officer making it.

Governor General in Council empowered to close Railway.

[a] **5E.** When, after inspecting any Railway or portion of a Railway, or any rolling-stock used thereon, any officer appointed under section 5A reports to the Governor General in Council that in his opinion the use of the Railway or portion or of any specified rolling-stock will be attended with danger to the public using it, the Governor General in Council may, by order, direct that the Railway or portion be closed for the public conveyance of passengers, or that the rolling-stock so specified shall no longer be used, as the case may be.

Re-opening of Railway.

[b] **5F.** (*1*) When a Railway or portion of a Railway has been closed under section 5E, it shall not be re-opened for the public conveyance of passengers unless and until it has been inspected, and its opening sanctioned, in accordance with the provisions of section 5B.

(*2*) When the Governor General in Council has directed under section 5E that any rolling-stock shall not be used, the rolling-stock shall not be used unless and until an officer appointed under section 5A reports that it is fit for use and the Governor General in Council sanctions its use.

Accidents to be reported.

**6.** Every Railway-administration shall, within forty-eight hours after the occurrence upon the Railway of—

(*a*) any accident attended with loss of human life or serious injury to person or property,

(*b*) any accident of a description usually attended with such loss or injury, and

(*c*) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified,

give notice thereof to the Local Government;

and the Station-master nearest to the place at which the accident occurs,

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[a, b] See Act IV of 1883, section 2.

or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall, without unnecessary delay, give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs, or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

Returns of accidents.

**7.** Every Railway-administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor General in Council from time to time directs.

General rules for working Railway.

**8.** Every Railway-administration shall make general rules for the following purposes (that is to say) :—

(*a*) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled;

(*b*) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon;

(*c*) for regulating the provision to be made for the accommodation and convenience of passengers;

(*d*) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods;

[a](*dd*) for regulating the conduct of the Railway-servants; and

(*e*) generally for regulating the travelling upon, and the use, working and management of, the Railway;

and may, from time to time, alter any such rules.

Penalty for breach of rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

Notification of rules.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs.

Power to cancel rules.

The Governor General in Council may at any time cancel any such rule.

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[a] See Act IV of 1883, section 3.

Copy and translation of Act, &c., to be shown at stations.

**9.** An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

## CHAPTER III.

### CARRIAGE OF PROPERTY.

Special contract limiting liability.

**10.** Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property shall, in so far as it purports to limit such obligation or responsibility, be void unless— IX of 1872.

(*a*) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(*b*) is otherwise in a form approved by the Governor General in Council.

No liability for loss of gold, silver, &c., unless value declared and increased charge accepted.

**11.** When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

No liability for unbooked luggage.

**12.** A carrier by Railway shall in no case be answerable for loss, destruction or deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

Plaintiffs not required to prove negligence.

**13.** In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

Lien for money due for carriage, &c., of property.

**14.** If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property, or for demurrage or wharfage in respect of the same, the Railway-administration may detain the whole or any part of such property, or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-administration ;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property ;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto ;

or such carrier may recover any such sum by suit.

Written account of property to be given on demand.

**15.** The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

Dangerous goods.

**16.** No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same ;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

## CHAPTER IV.

### CARRIAGE OF PASSENGERS.

Passengers on payment of fares to be furnished with tickets.

**17.** Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying, in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare;

Tickets to be shown and given up on demand.

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets.

Fares and tickets at intermediate stations.

**18.** At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

Preferential right of ticket-holders.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets:

Proviso.

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government, who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Governor General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

Fares to be prepaid.

**19.** Except with the permission of the Railway-administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

Power to remove persons suffering from infectious disease.

**20.** Any passenger found suffering from an infectious disease in a Railway-carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant.

Any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

## CHAPTER V.

### OFFENCES AND PROCEDURE.

#### (*A*)—*Offences by the Railway-administration.*

Penalty for opening or re-opening Railway in contravention of sections 5 and 5F, and keeping open after order under section 5E.

[a]**21.** Any Railway-administration opening or using, in contravention of section 5, section 5B or section 5C, any Railway, or any portion or extension of, or addition to, a Railway, or keeping, in contravention of an order of the Governor General in Council under section 5E, any Railway or portion thereof open, or re-opening, in contravention of section 5F, sub-section (*1*), any Railway or portion thereof, or using in contravention of section 5F, sub-section (2), any rolling-stock, shall forfeit to Government the sum of one thousand rupees for every day during which the Railway, portion, extension or addition remains open or is used in contravention of any of those sections or of the order of the Governor General in Council, as the case may be, or during which the rolling-stock is so used.

For omitting to report accident.

**22.** Any Railway-administration omitting to give notice as required by section 6 shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

For not sending return of accidents or making rules under section 8, or exhibiting copy under section 9.

**23.** Any Railway-administration failing to deliver any return mentioned in section 7 within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section 8, or to exhibit any abstract or copy mentioned in section 9 in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues.

#### (*B*)—*Offences by Railway-servants.*

For omitting to give notice of accident.

**24.** Any Station-master or other person omitting to give notice as required by section 6 shall be punished with fine which may extend to fifty rupees.

For drunkenness or breach of duty.

**25.** Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty,

or who negligently omits to perform his duty,

or who performs the same in an improper manner,

[a] See Act IV of 1883, section 4.

shall be punished with fine which may extend to fifty rupees;

or, if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For endangering the safety of persons.

**26.** If any Railway-servant in the discharge of his duty endangers the safety of any person—

(*a*) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section 8; or

(*b*) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

For receiving bribes.

**27.** Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code. XLV of 1860.

Amendment of Penal Code, section 161.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

For compelling passengers to enter carriages already full.

**28.** Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section 8, shall be punished with fine which may extend to one hundred rupees.

### (*C*)—*Offences by Persons generally.*

For not giving account of goods or giving false account.

**29.** Any person required under section 15 to give an account of the quantity and description of any property, who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property; and such fine shall be in addition to any charge to which such property may be liable.

For taking dangerous goods on

**30.** Whoever, in contravention of section 16, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose

of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees. Railway or delivering such goods without notice.

**31.** Any passenger travelling on a Railway without a proper ticket, or having such a ticket and not showing or delivering up the same when so required under section 17, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled. For travelling without ticket or not showing or delivering up ticket.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-administration.

**32.** Any person who defrauds, or attempts to defraud, any carrier by Railway— For evading payment of fare.

(*a*) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(*b*) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(*c*) by using or attempting to use a ticket on any day for which such ticket is not available;

(*d*) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible, For altering ticket.

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section 31 and shall, when recovered, be paid to the Railway-administration.

**33.** Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees; For entering carriage in motion.

and any passenger who rides, or attempts to ride, on the steps, or any For riding

on the steps.

other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

For riding on engine, tender, &c.

**34.** Any person who, without the permission of the Railway-administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway, or in or upon any vehicle not appropriated to the carriage of passengers,

shall be punished with fine which may extend to one hundred rupees.

For smoking.

**35.** Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway-carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For intoxication or nuisance.

**36.** Any person who is in a state of intoxication, or who commits any nuisance or act of indecency, in any Railway-carriage, or upon any part of any Railway;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For entering carriage or room reserved for females.

**37.** If any carriage, compartment, room or place be reserved by the Railway-administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place, knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For obstruct-

**38.** Whoever wilfully obstructs or impedes any Railway-servant in the

discharge of his duty, shall be punished with fine which may extend to one hundred rupees. ing Railway-servant in his duty.

**39.** Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section 8, shall be punished with fine which may extend to one hundred rupees. For entering carriage already full.

**40.** Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway, For removing signals or injuring carriage, &c.

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

shall be punished with fine which may extend to one hundred rupees.

**41.** Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-administration, he shall be punished with fine which may extend to fifty rupees, and may be immediately removed from such Railway by such servant or other person as aforesaid. For trespass. For refusing to leave on request.

**42.** The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle-trespass Act, 1871. For cattle-trespass within Railway-fences.

I of 1871.

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals, For wilfully driving cattle on fenced Railway;

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose, on unfenced Railway.

the person in charge of such animals, or, if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

I of 1871.

Recovery of fines and payment of compensation.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section 25 of the said Cattle-trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction. I of 1871.

Amendment of Act I of 1871, ss. 1 and 26.

The expression "public road" in sections 11 and 26 of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section 11.

For opening or not properly shutting gates.

43. Whoever, knowing or having reason to believe that any engine or train is approaching along a Railway, opens any gate which the Railway-administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes or attempts to drive or take, any vehicle, animal or other thing, across the Railway;

and whoever at any time, in the absence of a gate-keeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

For minors obstructing line or throwing stones at train.

44. Whenever any minor under twelve years of age unlawfully—

(*a*) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(*b*) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent-way of a Railway, or

(*c*) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

For wilful

45. Whoever wilfully does any act, or wilfully omits to do what he is

legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transportation (or, in the case of an European or American, penal servitude) for a term of not less than seven years, or with imprisonment for a term which may extend to ten years.

act or omission endangering persons on Railway.

**46.** Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For rash or negligent act.

**47.** Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus, &c., drivers to Railway-servants.

### (*D*)—*Arrest of Offenders.*

**48.** If any person commits any offence punishable under this Act and there is reason to believe that he will abscond, or his name and address are unknown and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

Arrest for offences punishable under this Act of offender whose name is unknown, &c.

**49.** Every person committing any offence mentioned in sections 8, 25, 26, 36, 37, 38, 44, 45 and 46 may be arrested without any warrant or written authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

Arrest for offences against certain sections.

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

### (*E*)—*Jurisdiction.*

**50.** No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Magistrates having jurisdiction.

Place of trial.

Any person committing any offence against this Act or the rules made under it shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette, and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(*F*)—*Saving of other Criminal Laws.*

Saving of prosecutions under other laws.

**51.** Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

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## CHAPTER VI.

### MISCELLANEOUS.

Power of Government to make rules as to fences, gates and bars.

**52.** The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may, from time to time, make rules requiring—

(*a*) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(*b*) that gates or bars be erected at places where any Railway crosses a road on the level; and

(*c*) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section 42, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-administration wilfully neglecting or violating any rule made under this section shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

Power to declare Local Government in respect of any Railway.

**53.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam. Power to extend Act to steam-tramways.

## THE FIRST SCHEDULE.

ACTS REPEALED.

(*See section 2.*)

| Number and year. | Title. |
|---|---|
| XVIII of 1854 ... | An Act relating to Railways in India. |
| XXXI of 1867 ... | An Act to render penal certain offences committed by servants of Railway Companies. |
| XIII of 1870 ... | An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government. |
| XXV of 1871 ... | An Act to amend the Railway Act. |

## THE SECOND SCHEDULE.

(*See section 11.*)

(*a*) Gold or silver, coined or uncoined, manufactured or unmanufactured;
(*b*) plated articles;
(*c*) cloths and tissue and lace of which gold or silver forms part,
(*d*) precious stones, jewellery, trinkets;
(*e*) watches, clocks or time-pieces of any description;
(*f*) Government securities;
(*g*) Government stamps;
(*h*) bills of exchange, hundís, promissory notes, bank-notes, orders or other securities for payment of money;
(*i*) maps, writings, title-deeds;
(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;
(*k*) glass, china, marble;
(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;
(*m*) shawls;
(*n*) lace;
(*o*) opium;
(*p*) ivory, ebony, sandalwood, sandalwood-oil;
(*q*) musical and scientific instruments.

## ACT No. V OF 1879.[a]

*Received the Governor General's assent on the 22nd March, 1879.*

## An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:— XI of 1876.

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:— XI of 1876.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say:—"(*m m*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say:—

"(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)—

"discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

"lend or advance in any way to any individual or partnership-firm an

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[a] This Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáríbágh, Lohárdága and Mánbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October 1881, Part page 504.

amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

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## ACT No. VI of 1879.

*Received the Governor General's assent on the 22nd March, 1879.*

## An Act for the preservation of wild elephants.

Preamble.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879":

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area [a] by notification in the local official Gazette.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the VII of 1878. Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

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[a] The Act has been extended to the following places, namely:—
Killah Sukindah, in Katak,—see *Calcutta Gazette*, 15th March, 1882, Part I, page 278.
the District of Maimansingh,—see *Calcutta Gazette*, 23rd May, 1883, Part I, page 416.
the Districts of Kamrup, Darrang, Naugong, Sibságar, Lakhimpur, Káchár, the Nágá Hills and the Khásí and Jaintiá Hills,—see *Assam Gazette*, 10th July, 1880, page 340.
the Gáro Hills (with the exception of certain portions of the estates of the zamíndárs of Meshpára, Bijni and Karaibári),—see *Assam Gazette*, 23rd September, 1882, Part I, page 453.
the Eastern Dwárs in the District of Goálpára, and that part of the District of Silhat which has not been permanently settled,—see *Assam Gazette*, 6th January, 1883, Part I, page 2.

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

[a] 4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government to declare what are main roads and canals, and to make rules as to licenses.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating—

(*a*) the grant and renewal of licenses under this Act;

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal;

(*c*) the time during which such licenses shall continue in force; and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this

[a] See Act II of 1883.

section, such license shall become void and shall be delivered up to the convicting Magistrate.

License to be produced and shown on requisition of certain officers.

8. Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (*a*) and (*b*), may require him to produce and show a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

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## ACT No. XI OF 1879.

*Received the Governor General's assent on the 21st July, 1879.*

## The Local Authorities Loan Act, 1879.

Preamble.

XXIV of 1871. WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Local Authorities Loan Act, 1879":

Local extent. Commencement.

It extends to the whole of British India, [a] and shall come into force upon the passing thereof.

Repeal of Act XXIV of 1871.

XXIV of 1871. 2. The Local Public Works Loan Act, 1871, is hereby repealed But all applications, declarations, authorizations, attachments, loans and rules made under the said Act shall be deemed to have been made under this Act.

"Local authority."

3. In this Act, "local authority" means any body corporate, municipal committee or other persons legally entitled to the control or management of

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáríbágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504

any local or municipal fund, or legally entitled to impose any cess, rate, duty of tax upon any persons within any local area; and

"Funds." "funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

Loans for works may be granted on security of funds.

**4.** Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Power to Governor General in Council to make rules.

**5.** The Governor General in Council may, from time to time, make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made;

(2) the works for which loans may be made;

(3) the manner of making applications for loans;

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them;

(13) the accounts to be kept in respect of loans,

and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

Remedy by **6.** If any loan made under such rules, or any interest or costs due in

respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings: attachment if loan not repaid.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act. Attachment not to defeat prior charges legally made.

7. The Local Government, with the previous sanction of the Governor General in Council, may authorize any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section 6. Local Government may authorize parties to borrow from private persons under this Act.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section 5, so far as the same may be applicable to the case of such loans. Power to make rules in regard to such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void: Loans not to be effected except under this Act.

Provided that nothing herein contained shall be deemed—

(*a*) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making Improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force; or

(*b*) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works.

Application of Act to loans existing previous to the fifth of September, 1871.

**9.** The Secretary of State in Council shall be entitled to the remedy mentioned in section 6 for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money; and the Governor General in Council or the Local Government may declare that any person who before the said fifth day of September, 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

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## ACT No. XII OF 1879.

*Received the Governor General's assent on the 29th July, 1879.*

## An Act to amend *the Code of Civil Procedure*, the Registration Act, 1877, and the Limitation Act, 1877.[a]

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows:— X of 1877.

Amendment of Code of Civil Procedure.

**1 to 103.**—[*Repealed by Act XIV of 1882, section 3 and Schedule I.*]

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AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:— III of 1877.

Amendment of Act III of 1877, section 35.

**104.** In section 35 of the same Act, after the words "person appears", the words "to the registering officer" shall be inserted; and after the words "refuse to register the document", the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of section 51.

**105.** In section 51 of the same Act, for the figures "87", the figures "89" shall be substituted.

Amendment of section 83.

**106.** In section 83 of the same Act, for the words "Subordinate Magistrate of the first" the words "Magistrate of the second" shall be substituted.

Amendment of section 89

**107.** In section 89 of the same Act, for the words "the certificate" the words "the copy" shall be substituted; and to the same section the following paragraph shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of

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[a] The portion of this Act which amends the Registration and Limitation Acts has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazárfbágh, Lohardága and Mánbhum, and Pargana Dhálbhum and the Kolhan in the District of Singbhúm.—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

XIV of 1882. Civil Procedure [a] shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

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XV of 1877. AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows :—

**108.** In the second schedule to the said Indian Limitation Act, 1877,— for No. 161, the following shall be substituted (namely) :— Amendment of Act XV of 1877, Schedule II.

| | | | | |
|---|---|---|---|---|
| XIV of 1882. | "161.—For the issue of a notice under section 258 of the same Code [a] to show cause why the payment or adjustment therein mentioned should not be recorded as certified. | Twenty days | ... | When the payment or adjustment is made." |

to No. 166, column one, the following words shall be added (namely) :— "or on the ground that the decree-holder has purchased without the permission of the Court;"

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's" the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted (namely) :—

| | | | | |
|---|---|---|---|---|
| XIV of 1882. | "171 A.—Under section 366 of the same Code,[a] by the defendant. | Sixty days | ... | The date of the plaintiff's death. |
| XIV of 1882. | "171 B.—Under section 368 of the same Code,[a] to have the representative of a deceased defendant made a defendant. | Ditto | ... | The date of the defendant's death. |
| XIV of 1882. | "171 C.—Under section 371 of the same Code,[a] for an order to set aside an order for abatement or dismissal. | Ditto | ... | The date of the order for abatement or dismissal." |

and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified," the words "certain date) such date" shall be substituted.

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[a] See Act XIV of 1882, section 3.

# THE LEGAL PRACTITIONERS ACT, 1879.

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## ACT No. XVIII OF 1879.

*Received the Governor General's assent on the 29th October, 1879.*

**An Act to consolidate and amend the law relating to Legal Practitioners.**

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

## CHAPTER I.

PRELIMINARY.

Short title. Commencement.

1. This Act may be called "The Legal Practitioners Act, 1879": and shall come into force on the first day of January, 1880.

This section and section 2 extend to the whole of British India. Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.[a]

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein. Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act. Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act. References to repealed enactments.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"Judge" means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated: "Judge":

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. XV of 1882[b] or Act No. XI of 1865: "Subordinate Court";

XV of 1882.
XI of 1865.

"Revenue-office" includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents: "Revenue-office":

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[a] The Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency (except the Scheduled Districts), with effect from the 1st April, 1882,—see *Fort St. George Gazette*, 20th September, 1881, Part I, page 491; *ibid*, 7th December, 1881, Part I, page 707.

Chapter I, Section 40, Schedule II, and so much of Chapters III, V, VI and VII as relates to Pleaders, have been extended to Coorg,—see *Mysore Gazette*, 6th December, 1879, Part I, page 355.

The Act has also been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáríbágh, Lohárdaga and Mánbhum, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[b] See Act XV of 1882, section 2.

"Legal practitioner." "Legal practitioner" means an Advocate, Vakíl or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

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## CHAPTER II.

### Of Advocates, Vakíls and Attorneys.

Advocates and Vakíls. 4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court, or [a] under section 41 of this Act,[a] shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office:

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

Attorneys of High Court. 5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any Revenue-office.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

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[a-a] See Act IX of 1884, section 2.

## CHAPTER III.

### Of Pleaders and Mukhtars.

Power to make rules as to qualification, &c., of Pleaders and Mukhtárs.

**6.** The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(*a*) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;

(*b*) the qualifications, admission and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court;

(*c*) the fees to be paid for the examination and admission of such persons; and

(*d*) the suspension and dismissal of such Pleaders and Mukhtárs.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law: Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Certificates to Pleaders and Mukhtárs.

**7.** On the admission, under section 6, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

Pleaders on enrolment may practise in Courts and Revenue-offices.

**8.** Every Pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

Mukhtárs on enrolment may practise in Courts.

**9.** Every Mukhtár holding a certificate issued under section 7 may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a Mukhtár in any such civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure[a]) appear, plead and act in any such criminal Court and any Court subordinate thereto. X of 1882.

No person to practise as Pleader or Mukhtár unless qualified.

**10.** Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents. Ben. VIII of 1869.

Power to declare functions of Mukhtárs.

**11.** Notwithstanding anything contained in the Code of Civil Procedure,[b] the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court. XIV of 1882

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[a] See Act X of 1882, section 3.

[b] See Act XIV of 1882, section 3.

Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.

**12.** The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

Suspension and dismissal of Pleaders and Mukhtárs guilty of unprofessional conduct.

**13.** The High Court may also, after such enquiry as it thinks fit, suspend or dismiss—

any pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,[a] or

XIV of 1882.

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause:

[b] Provided that where the party is—

(*a*) a pardánashín woman, or

(*b*) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof.[b]

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.

**14.** If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High

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[a] See Act XIV of 1882, section 3.

[b-b] See Act IX of 1884, section 3.

Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, [a] any Judge of a Court of Small Causes of a Presidency-town,[a] any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the District Magistrate,[b] be made through the District Magistrate [b] and the Sessions Judge;

(*c*) when made by the District Magistrate, [b] be made through the Sessions Judge;

(*d*) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

Power to call for record in case of acquittal under section 14.

**15.** The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to make rules for Mukhtárs on appellate side of High Court.

**16.** Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (*a*),[c] any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):— XIV of 1882.

(*a*) the qualifications and admission of proper persons to be Mukhtárs practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the security which they may be required to give for their honesty and good conduct;

(*d*) the suspension and dismissal of such Mukhtárs; and

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[a-a] See Act IX of 1884, section 4.

[b] See Act X of 1882, section 3.

[c] See Act XIV of 1882, section 3.

(*e*) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

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## CHAPTER IV.

### OF REVENUE-AGENTS.[a]

**17.** The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :— Power to make rules as to qualifications, &c., of Revenue-agents.

(*a*) the qualifications, admission and certificates of proper persons to be Revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such Revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers and duties.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. Publication of rules.

**18.** On the admission of any person as a Revenue-agent under section 17, the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein. Certificates to Revenue-agents.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

**19.** Every Revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any Revenue-office mentioned therein and situate Enrolment of Revenue-agent.

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[a] Revenue-agents in Oudh may appear, plead and act in suits under the Oudh Rent Act, XIX of 1868,—see Act XVIII of 1876, section 25, and the third clause of section 2 of this Act.

within the limits of the territory under the Chief Controlling Revenue-authority; and, subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

No person to act as agent in Revenue-offices unless qualified.

**20.** Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

Dismissal of Revenue-agent convicted of criminal offence.

**21.** The Chief Controlling Revenue-authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

Dismissal of Revenue-agent guilty of unprofessional conduct.

**22.** The Chief Controlling Revenue-authority may also, after making such enquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Procedure when Revenue-agent is so charged in subordinate office.

**23.** If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the

person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue-authority to call for record.

**24.** The Chief Controlling Revenue-authority, in any case in which a Revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

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## CHAPTER V.

### Of Certificates.

Fee for certificates.

**25.** Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed [a] and of such description as the Local Government may from time to time prescribe: [a]

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

Dismissed practitioners to surrender certificates.

**26.** When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

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[a-a] See Act IX of 1884, section 5.

## CHAPTER VI.

### Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents.

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue-proceedings.

**27.** The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Mukhtár or Attorney upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in subordinate Courts,[a] and in respect of the fees of his adversary's Revenue-agent appearing, pleading or acting under section 10.[a]

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Attorney, Mukhtár or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

Agreements with clients.

**28.** No agreement entered into by any Pleader, Mukhtár or Revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such Pleader, Mukhtár or Revenue agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Power to modify or cancel agreements.

**29.** Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Agreements to exclude further claims.

**30.** Such an agreement shall exclude any further claim of the Pleader, Mukhtár or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and

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[a-a] See Act IX of 1884, section 6.

completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

Reservation of responsibility for negligence.

**31.** A provision in any such agreement that the Pleader, Mukhtár or Revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtár or Revenue-agent, shall be wholly void.

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## CHAPTER VII.

### PENALTIES.

On persons illegally practising as Pleaders, Mukhtárs or Revenue-agents.

**32.** Any person who practises in any Court or Revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtár or Revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed Pleader, &c., failing to deliver certificate.

**33.** Any Pleader, Mukhtár or Revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

**34.** Any Pleader, Mukhtár or Revenue-agent who, under the provision of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtár or Revenue-agent in any Court or Revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

**35.** Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and

by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Penalty for receiving or giving commission.

**36.** Whoever commits any of the following offences:—

(*a*) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;

(*b*) retains any gratification out of remuneration paid or delivered or agreed to be paid or delivered to any legal practitioner for such employment;

(*c*) being a legal practitioner, tenders, gives or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

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## CHAPTER VIII.

### MISCELLANEOUS.

Local Government to appoint examiners.

**37.** To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

**38.** Except as provided by sections 4, 5, 16, 27, 32 and 36, nothing in this Act applies to Advocates, Vakíls and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtárs practising in such Court, or to Advocates enrolled [a] under section 41 of this Act.[a]

Suspension or dismissal of person holding Mukhtár and Revenue-agent's certificates.

**39.** When any person who holds a certificate as a Mukhtár under section 7 and a certificate as a Revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

Pleaders, &c., not to be suspended or dismissed without being heard.

**40.** Notwithstanding anything hereinbefore contained, no Pleader, Mukhtár or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

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[a, a] See Act IX of 1854, section 7.

Power for certain High Courts to enrol advocates.

[a]41. (*1*) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(*2*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(*3*) The High Court may dismiss any advocate so enrolled or suspend him from practice.

(*4*) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Panjáb, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

Repeal of Acts I of 1846 and XX of 1853.

I of 1846. [b]42. Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

XX of 1853.

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## FIRST SCHEDULE.

### ENACTMENTS REPEALED.

(*See section 2.*)

| Number and date of enactments. | Title. | Extent of repeal. |
|---|---|---|
| Act XX of 1865 ... | To amend the law relating to Pleaders and Mukhtárs. | The whole. |
| Act XXIX of 1865 ... | To amend the Pleaders, Mukhtárs and Revenue-Agents Act, 1865. | So much as has not been repealed. |
| Act IX of 1866 ... | To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs and Revenue-Agents Act, 1865," and of Act No. XXIX of 1865. | The whole. |
| Act IV of 1876 ... | To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal. | The whole. |
| Act XVII of 1877 ... | The Panjáb Courts Act, 1877 ... | Sections 42, 43, 44 and 45. |

[a] See Act IX of 1884, section 8. [b] See Act IX of 1884, section 9.

## SECOND SCHEDULE.

### VALUE OF STAMPS FOR CERTIFICATES.

(*See section 25.*)

### I.

For a certificate authorizing the holder to practise as a Pleader—

(*a*) In the High Court and any subordinate Court—rupees fifty:

(*b*) In any Court of Small Causes in a Presidency-town—rupees twenty-five:

(*c*) In all other subordinate Courts—rupees twenty-five:

(*d*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen:

(*e*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

### II.

For a certificate authorizing the holder to practise as a Mukhtár—

(*f*) In the High Court and any subordinate Court—rupees twenty-five:

(*g*) In any Court of Small Causes in a Presidency-town—rupees fifteen:

(*h*) In all other subordinate Courts—rupees fifteen:

(*i*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten:

(*j*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

### III.

For a certificate authorizing the holder to practise as a Revenue-agent—

(*k*) In the office of the Chief Controlling Revenue-authority and in any Revenue-office subordinate to such Authority—rupees fifteen:

(*l*) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten:

(*m*) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

# THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

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THE SCHEDULE.

## ACT No. XXI OF 1879.

*Received the Governor General's assent on the 14th November, 1879.*

## An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Preamble. WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is XI of 1872

expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title. **1.** This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879."

Extent. It extends to the whole of British India;[a]

to all Native Indian subjects of Her Majesty beyond the limits of British India; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commencement. and it shall come into force on the passing thereof.

Saving of other laws and of treaties. But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

XI of 1872. Repeal. **2.** The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

Interpretation-clause. **3.** In this Act, unless there is something repugnant in the subject or context—

"Political Agent." "Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India:

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

X of 1882. "European British subject." "European British subject" means a European British subject as defined in the Code of Criminal Procedure.[b]

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—
the Districts of Hazaríbagh, Lohárdaga and Mánbhum, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[b] See Act X of 1882, section 3.

## CHAPTER II.

### POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor General in places beyond British India, and delegation thereof.

**4.** The Governor General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

Notification of exercise or delegation of such powers.

**5.** A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Appointment, powers and jurisdiction of Justices of the Peace.

**6.** The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure[a] on Magistrates of the first class who are Justices of the Peace and European British subjects. X of 1882.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

Confirmation of existing Political Agents and Justices.

**7.** All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects out of British India

**8.** The law relating to offences and to criminal procedure for the time being in force in British India, shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

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[a] See Act X of 1882, section 3.

## CHAPTER III.

## INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

*9 & 10.* [*Repealed by Act X of 1882, section 2 and Schedule I (b).*]

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## CHAPTER IV.

### EXTRADITION.

Arrest and removal of persons other than European British subjects escaping into British India.

**11.** When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

XLV of 1860.

Direction and execution of warrant.

**12.** Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants;[a] and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

**13.** Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

Requisitions for extradition by the

**14.** Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time

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[a] See now Act X of 1882, Chapter VI.—B.

Executive of any part of British dominions or Foreign power.

being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to enquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the person making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section 10 [a] shall apply to inquiries held under this section.

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

**15.** Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section 11, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate to inform Political Agent or Local Government.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

Person arrested to be released after certain time

**16.** No person arrested on a warrant issued by a Magistrate under section 15 shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section 11 from the

[a] Repealed. See now Act X of 1882, section 189.

Political Agent for any State for the delivery of such person, or an order with reference to him under section 14 from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State. if not proceeded against.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

X of 1882.

17. The provisions of the Code of Criminal Procedure in respect of bail[a] shall apply in the case of any person arrested under section 15 in the same manner as if such person were accused of committing in British India the offence with which he is charged. Bail.

## CHAPTER V.

### MISCELLANEOUS.

18. The Governor General in Council may, from time to time, make rules to provide for— Power to make rules.

(1) the confinement, diet and prison-discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV;[b] and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal: Execution of commissions issued by Foreign Criminal Courts.

XIV of 1882.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

## THE SCHEDULE.

XLV of 1860.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION 11.

Sections 206, 208 and 224; sections 230 to 263, both inclusive; sections

[a] See Act X of 1882, section 3, and Chapter XXXIX.

[b] See Act XIV of 1882, section 3.

299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

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## ACT No. I OF 1880.

*Received the Governor General's assent on the 9th January, 1880.*

## An Act to confer certain powers on Religious Societies.

Preamble. WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Religious Societies Act, 1880":

Commencement. It shall come into force at once; and

Local extent. shall extend to the whole of British India;[a]

but nothing herein contained shall apply to any Hindús, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

Appointment of new trustee in cases not otherwise provided for. 2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—
the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhalbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

**3.** Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section 17.

III of 1877.

Property to vest in new trustees without conveyance.

**4.** When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

**5.** Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

Provision for dissolution of societies and adjustment of their affairs.

**6.** Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit.

**7.** If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them,

but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Saving of certain provisions of instruments.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be submitted to High Court.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

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## THE SCHEDULE.

(*See section 3.*)

Memorandum of the appointment of new trustees of the (*describe the church, chapel or other buildings and property*) situate
at a meeting duly convened and held for that purpose (*in the vestry of the said* ) on the day of
18 , *A. B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same.*)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

*First.*—Old continuing trustees:—

(*here insert the same.*)

*Second.*—New trustees now chosen and appointed :—

(*here insert the same.*)

Dated this day of 18 .

Signed by the said *A. B.* as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

*A. B.*,
*Chairman of the said Meeting.*

*C. D.*
*E. F.*

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# THE CANTONMENTS ACT, 1880.

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## ACT No. III OF 1880.

*Received the Governor General's assent on the 30th January, 1880.*

## An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows:— Preamble.

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## CHAPTER I.

### PRELIMINARY.

1. This Act may be called "The Cantonments Act, 1880." Short title.

This section, section 2 and section 24 apply to the whole of British India.[a] The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration[b]; and, from the date on which any such portion is so extended to any place, such of the enactments[c] for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion, shall cease to have effect in such place. Local extent. Enactments inconsistent with this Act in Madras and Bombay cantonments.

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[a] The whole Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáríbágh, Lohárdaga and Mánbhum, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, p. 504.

[b] Sections 21, 22, 23 and 25 to 34 (both inclusive) have been extended to all cantonments in the Bombay Presidency in which the Bombay Cantonments Act, III of 1867, was, at the date of the extension, in force,—see *Bombay Government Gazette*, 29th April, 1880, Part I, p. 432, and *ibid.*, 23rd December, 1880, Part I, p. 1115.

[c] The cantonment law in the Presidency of Madras is Madras Act I of 1866; that in the Presidency of Bombay is Bombay Act III of 1867.

Repeal of Act XXII of 1864.

2. Act No. XXII of 1864 (*to provide for the administration of Military Cantonments*) is hereby repealed; but all orders, declarations, rules and regulations made, powers conferred, and Courts established under that Act shall be deemed to be respectively made, conferred and established under this Act. XXII of 1864.

References to Act XXII of 1864.

All references to the said Act No. XXII of 1864 in enactments passed subsequently thereto shall be read as if made to this Act. XXII of 1864.

## CHAPTER II.

### CRIMINAL JURISDICTION.

Cantonment Magistrate.

3. Every person invested by the Local Government, under the Code of Criminal Procedure,[a] with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate, and shall be deemed a[b] Magistrate in charge of a division of a district[b] within the meaning, and for the purposes, of the said Code. X of 1882.

Assistant Cantonment Magistrate.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

## CHAPTER III.

### CIVIL JURISDICTION.

Small Cause jurisdiction of Cantonment Magistrate.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established. XI of 1865.

The Local Government shall declare, and may from time to time alter, the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

Small Cause jurisdiction of Assistant

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits insti-

[a] See Act X of 1882, section 3.

[b-b] *Query* "Sub-divisional Magistrate",—see Act X of 1882, section 3.

tuted in any Court referred to in section 5: provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees. Cantonment Magistrate.

XI of 1865. **7.** All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided. Act XI of 1865 to apply to all Small Cause Courts in cantonments.

III of 1859. **8.** Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III of 1859 (*for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates*) shall cease, and so much of any Act as authorises the commanding-officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions, shall cease to have effect within the limits of such cantonment. Military courts of requests.

## CHAPTER IV.

### POLICE.

**9.** The Police-force employed in any cantonment shall be deemed to be part of the general Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V of 1861 (*for the Regulation of Police*), section 2,[a] and all the provisions of the said Act shall be applicable to such force. Act V of 1861 applicable to Police employed in cantonments.

V of 1861.

The administration of the Police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment. Administration of Police within cantonment.

V of 1861. **10.** The Local Government may extend section 34 of the said Act No. V of 1861 to any cantonment situate in the territories administered by such Government. Extension of section 34, Act V of 1861, to cantonments.

**11.** The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief Police-officer in the cantonment for service or execution through the cantonment police; and the said chief Police-officer shall serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules. Service of process sent by commanding-officer of cantonment.

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[a] Repealed, as to the Lower Provinces of Bengal, by Bengal Act VII of 1869.

Power to extend Act XX of 1856 to cantonments.

**12.** The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX of 1856 (*to make better provision for the appointment and maintenance of Police Chaukidárs in Cities, Towns, Stations, Suburbs and Bázárs in the Presidency of Fort William in Bengal*) to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the District Magistrate[a] and the Local Government. XX of 1856.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the District Magistrate[a] shall, during such absence or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

Power to order division of cantonments, &c.

**13.** The Local Government may order that any cantonment to which the provisions of the said Act No. XX of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section 10 of the same Act. XX of 1856.

## CHAPTER V.

### Spirituous Liquors.

Unauthorized sale of spirituous liquor.

**14.** If within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor, wine or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower or a soldier's wife, without a written license from the Officer Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such liquor, wine or drug, shall be liable on conviction to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping, as prescribed for offences under section 2 of Act No. VI of 1864 (*to authorize the punishment of whipping in certain cases*), subject to all the provisions of that Act. VI of 1864.

[a] See Act X of 1882, section 3.

Presumption in case of second conviction.

**15.** If any person convicted of an offence under section 14 is again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him or is in his possession shall, without further proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.

Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit.

**16.** If within such cantonment or limits any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner, removes, conveys or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

Arrest of offenders under section 14 or 16, and seizure of spirituous liquor, &c.

**17.** If any person subject to the provisions of this Act is found committing any offence contrary to section 14 or section 16, any Police-officer may immediately without warrant arrest such person, and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

Confiscation of such liquor, &c.

**18.** In case of a conviction for any offence under section 14 or section 16, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same, or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

Detention of property seized.

**19.** Anything seized under section 17 in respect of which any person is charged with an offence under this Act may be ordered to be detained until

the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

Disposal of property seized.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

Saving of articles sold or supplied for medicinal purposes

**20.** The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists or druggists.

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## CHAPTER VI.

### Municipal Taxation.

General power of taxation.

**21.** The Local Government may from time to time, with the previous sanction of the Governor General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed.

Power to provide for assessment and collection of taxes.

**22.** When any tax is leviable in a cantonment under section 21, the Local Government may, from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

Application of proceeds of taxes.

**23.** The proceeds of all taxes levied in any cantonment under section 21 shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section 25.

Power to prohibit taxation in cantonments.

**24.** Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

## CHAPTER VII.

### SUBSIDIARY RULES.

Power to make cantonment-rules.

**25.** The Local Government may from time to time make rules[a] consistent with this Act to provide within the limits of any cantonment for the matters hereinafter mentioned.

Rules may be general or special.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

Rules to be confirmed by Governor General in Council.

**26.** No rule made under section 25 shall have effect until the same has been confirmed by the Governor General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

For what matters rules may provide.

**27.** The rules made under section 25 may provide for all or any of the following matters :—

*1st*—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed;

*2nd*—maintaining proper registers of immoveable property within the limits of the cantonment, and providing for the registration of transfers of such property;

*3rd*—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

*4th*—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment,[b] or for carrying out any rules made under section 25; and the appointment of the necessary servants and establishments;

*5th*—the definition and prohibition of public nuisances;

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[a] Local rates may in the Panjáb be made available for carrying out rules made under this section,—see Act XX of 1883, section 9.

[b] See Act XX of 1883, section 9.

*6th*—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds, and of all offensive or dangerous trades and occupations;

*7th*—inspecting and controlling brothels and preventing the spread of venereal disease;

*8th*—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

*9th*—the execution and promotion of works of public utility and convenience;

*10th*—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

*11th*—the imposition of penalties on persons convicted of the breach of any rule made under section 25, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

Trial of breaches of rules.

**28.** Breaches of any rule made under section 25 shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXXII[a] of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the District Magistrate.[b] X of 1882.

Fine how levied.

**29.** In every case in which an offender is sentenced to a fine for the breach of any rule made under section 25, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

Imprisonment in case fine not levied.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

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a [b] See Act X of 1882, section 3.

Prosecutions, &c., under other enactments.

**30.** Nothing in this Act, nor in any rule made under section 25, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Extension of rules as to brothels and venereal disease.

**31.** Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor General in Council may extend to any place outside the limits of such cantonment, and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease, and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

Penalties for breach of rules in extended limits.

**32.** When such rules, with any additional rules made as aforesaid, are extended under section 31 to any place outside the limits of such cantonment, the Governor General in Council may provide, in the manner prescribed in clause 11 of section 27, for the imposition of penalties for the breach of such rules, and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

Effect of cantonment-rules on enactments previously in force.

**33.** Whenever, in any cantonment, rules have been made under section 25, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section 25 shall cease to have any effect.

Saving of jurisdiction of Courts-martial, &c.

**34.** Nothing in the foregoing sections shall be deemed to affect the jurisdiction or military authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute[a] for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences:

44 & 45 Vic., cap. 58.

Provided that, when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section 25, the commanding-officer shall not exercise the powers

[a] See now the Army Act, 1881 (44 & 45 Vic., cap. 58), as amended by subsequent Annual Army Acts, 1882, 1883 and 1884 (45 Vic., cap. 7; 46 Vic., cap. 6; and 47 Vic., cap. 8).

described in clause (*c*) of Part III of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section 25 and penalties have been laid down for their infringement. V of 1869.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment regulations shall cease from that time to have any effect in such cantonment.

Power to prescribe rules as to expenditure of funds raised under Act XX of 1856.

**35.** The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section 25 or section 81 of this Act, in addition to or in lieu of the purposes described in section 36 of the said Act No. XX of 1856. XX of 1856. XX of 1856.

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## ACT No. IV of 1880.

*Received the Governor General's assent on the 30th January, 1880.*

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which, such persons should be delivered up should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period;

and whereas, in pursuance of the said article, the Convention set forth in the schedule hereto annexed has been executed;

and whereas by the twentieth Article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth Article;

It is hereby enacted as follows:—

Provisions of Convention to be followed.

**1.** The provisions of the said Convention shall be followed in British India in every case to which they apply.

Procedure.

X of 1882. The procedure prescribed in the Code of Criminal Procedure[a] shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

Execution of commissions issued by Portuguese Criminal Courts.

**2.** The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code

XIV of 1882. of Civil Procedure, Chapter XXV;[b] and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal.

Short title.

**3.** This Act may be called "The Portuguese Treaty Act, 1880."

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## THE SCHEDULE.

Whereas by the nineteenth Article of a treaty dated the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Gov-

[a] See Act X of 1882, section 3.

[b] See Act XIV of 1882, section 3.

ernors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty;

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(*a*) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(*b*) The crimes for which the extradition shall be granted are the following:—

| British Indian Penal Code. | | Portuguese Penal Code. | | XLV of 1860. |
|---|---|---|---|---|
| Crime. | Section. | Crime. | Article. | |
| Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act ... | 299 to 304A | Voluntary homicide, including— ... | 349 | |
| | | Parricide ... ... | 355 | |
| | | Poisoning ... ... | 353 | |
| | | Infanticide ... ... | 356 | |
| | | And involuntary homicide caused by negligence ... ... | 368 | |
| Attempt to commit murder or culpable homicide ... | 307, 308, 511 | Attempt at homicide ... | 350; 6 to 11 | |
| Voluntarily causing hurt or grievous hurt ... | 319 to 333, 335 and 338 | Wounding, causing contusions or hurts ... | 359 to 367, 369 | |
| | | Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377 and 378. | | |
| Rape ... ... | 375 and 376 | Rape ... ... | 394, 395 to 397 | |

*(Schedule.)*

XLV of 1860.

| British Indian Penal Code | | Portuguese Penal Code. | |
|---|---|---|---|
| Crime. | Section. | Crime. | Article. |
| Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes .. ... | 360 to 373 | Kidnapping and hiding of minors ... ... | 342 to 344 |
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| Thefts ... .. | 378 to 382 | Thefts ... ... | 421 ; 424 to 431 |
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| Mischief to a vessel, or after preparation to cause death, hurt, or wrongful restraint | 437, 439, 440 | Aggravated cases of mischief ... ... | 475 and 481 |

(*Schedule*)

XLV of 1860.

| British Indian Penal Code. | | Portuguese Penal Code. | |
|---|---|---|---|
| Crime. | Section. | Crime. | Article. |
| Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes ... ... | 230 to 254 | Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes ... ... | 206 to 214 |
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| Crimes against other Laws. | Portuguese Penal Code | |
|---|---|---|
| | Crime. | Article. |
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| | *Portuguese Maritime Code.* | |
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The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(*c*) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(*d*) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(*e*) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may

take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishments shall be fulfilled according to priority of date of sentence.

(*f*) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State applied to.

(*g*) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(*h*) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions the following rule shall be observed :—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(*i*) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India:

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *primâ facie* proof of facts which constitute a crime for which extradition may be granted under clause (*b*) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(*j*) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(*k*) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(*l*) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party;

or on advice from such competent authority, transmitted by post, telegraph or other means, stating the existence of such warrant of arrest;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(*m*) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and, without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.[a]

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(*n*) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(*o*) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(*p*) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles

[a] For British Indian law, see Act X of 1882.

are found: the expenses by sea and beyond the frontier shall be defrayed by the other party.

(*q*) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities, irrespective of the nationality of the complainant, in accordance with the local laws.

(*r*) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(*s*) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport, and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party:

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that, after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(*t*) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February, one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,
*Viceroy and Governor General of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
*Governor General of Portuguese India.*

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# THE INDIAN MERCHANT SHIPPING ACT, 1880.

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## ACT No. VII OF 1880.

*Received the Governor General's assent on the 11th March, 1880.*

# An Act to amend the law relating to Merchant Shipping, and for other purposes.

Preamble. WHEREAS it is expedient to prevent the departure of certain ships from British India;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to, and expenses incurred in respect of, such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force; 17 & 18 Vic., cap. 104. 18 & 19 Vic., cap. 91.

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title. 1. This Act may be called "The Indian Merchant Shipping Act, 1880":

BENGAL SECRE

and it shall come into force on the first day of June, 1880. Commencement.

2. In this Act, unless there is something repugnant in the subject or context,— Interpretation-clause.

[a] "ship" includes every description of vessel used in navigation, not propelled by oars: "ship:"

"master" means any person (except a Pilot or Harbour-master) having for the time being the charge or control of a ship: "master:"

"port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port. "port."

## CHAPTER II.

### Unseaworthy and Unsafe Ships.

3. Nothing in this chapter contained shall apply— Saving clause.

(*a*) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council;

(*b*) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon;

(*c*) to any pleasure-yacht.

4. In this chapter, "British Indian ship" means a ship registered under Act No. XIX of 1838, Act No. X of 1841 or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India; and Interpretation-clause. "British Indian Ship:"

XIX of 1838. X of 1841. XI of 1850.

"British ship" includes a British Indian ship: "British ship:"

"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by rules published in the official Gazette, prescribe: "manner prescribed:"

A ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service: "unseaworthy."

[a] See 17 & 18 Vic., cap. 104, section 2.

"unsafe."

[a] A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

*Sending or taking Unseaworthy Ship to Sea.*[b]

Every person sending unseaworthy ship to sea liable to penalty.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Master taking unseaworthy ship to sea liable to penalty.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

*Implied Condition of Seaworthiness in Contract of Service.*[c]

Obligation of owner to crew with respect to seaworthiness.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such

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[a] See 39 & 40 Vic., cap. 80, section 6.
[b] See 39 & 40 Vic., cap. 80, section 4.
[c] See 39 & 40 Vic., cap. 80, section 5.

voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable. Proviso.

*Detention of Unsafe Ships by the Local Government.*[a]

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed. Provisional detention by Local Government.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship. Service of grounds on master.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained. Power to appoint surveyor. Action on receipt of his report.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order: Order of final detention.

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained. Service of report on master and appeal to Court of Survey.

9. Where a ship has been provisionally detained and a person has been appointed under section 8 to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section 15, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience; and Option to owner or master of appointing assessor to accompany surveyor.

[a] See 39 & 40 Vic., cap. 80, section 6.

Procedure where surveyor and assessor agree; where they differ.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

Power to refer to Court of Survey.

**10.** Notwithstanding anything contained in section 8, the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

*Detaining-officers.*[a]

Detaining-officers.

**11.** For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Their powers generally.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers[b] (that is to say):—

(*a*) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

(*b*) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make;

(*c*) he may require and enforce the production of all books, papers or documents which he considers important; and

(*d*) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Their power to order provisional

**12.** Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections 7

[a] See 39 & 40 Vic., cap. 80, sections 6, 9, 10 and 12.
[b] See 17 & 18 Vic., cap. 104, section 15.

and 8, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released. detention and survey.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship. Detaining-officer to report to Local Government.

*Of the Court of Survey and of Appeals and References thereto.* [a]

**13.** A Court of Survey for a port shall consist of a Judge sitting with two assessors. Constitution of Court of Survey.

**14.** The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case. The Judge.

**15.** The assessors shall be persons of nautical, engineering or other special skill and experience. The assessors.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

**16.** The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith. Judge to summon assessors.

**17.** Every such appeal and reference shall be heard in open Court. Case to be heard in open Court.

**18.** The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section 11 conferred on a detaining-officer. Powers of Judge and assessors.

**19.** The Judge may appoint any competent person to survey the ship and report thereon to the Court. Judge may appoint surveyor.

**20.** The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section 18 or section 19. Owner or master may attend at survey.

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[a] See 39 & 40 Vic., cap. 80, sections 7. 8, 9 and 12.

Power of Judge to detain or release ship.

**21.** The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Report to Local Government by Court.

**22.** The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of Local Government to make rules with respect to Court of Survey.

**23.** The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

(*a*) the procedure before the Court;

(*b*) the requiring, on an appeal, of security for costs and damages;

(*c*) the amount and application of fees; and

(*d*) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

*Scientific Referees.*

Power to appoint referee to hear appeal.

**24.** If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Option to appellant to require referee to be appointed.

**25.** The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Referee to have powers of Court of Survey.

**26.** The referee or referees to whom an appeal is referred under section 24 or section 25 shall have the same powers as a Judge of the Court of Survey.

*Costs of Detention and Damages incidental thereto.*[b]

Liability of Government for costs and

**27.** If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the

[a] See 39 & 40 Vic., cap. 80, section 15.

[b] See 39 & 40 Vic., cap. 80, sections 10 and 11.

provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

damages when ship wrongly detained.

**28.** If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of shipowner for costs when ship rightly detained.

**29.** For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

**30.** When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned:

Power to require from complainant security for costs, &c.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

Proviso as to complaint by one-fourth of crew.

**31.** Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Costs, &c., payable by Government recoverable from complainant.

*Grain-cargoes.*[a]

**32.** No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

Stowage of cargo of grain, &c.

[a] See 39 & 40 Vic, cap. 80, section 22.

Penalty for improper stowage of such cargo.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

*Deck and Load-lines.*[a]

Marking of deck-lines.

**33.** Every British Indian ship shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck-plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground, or black on a light ground.

Marking of load-lines.

**34.** The master of every British ship not being a coasting-vessel within meaning of the Sea Customs Act, 1878, shall, before his ship is entered outwards from any port in British India upon any voyage, or, if that is not practicable, as soon after as may be, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre. VIII of 1878.

The centre of such disc shall indicate the maximum load-line in salt-water to which it is intended to load such ship for that voyage.

Statement in application to Customs-officer for entry outwards.

**35.** The person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre; and, if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

Copy of statement to be entered in agreement with the crew and in the log-book.

**36.** A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew; and no shipping-master shall proceed with the engagement of the crew till this entry is made.

The master shall enter a copy of this statement in the official log-book (if any).

Ship to be kept marked.

**37.** When a ship has been marked as by section 34 required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

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[a] See 39 & 40 Vic., cap. 80, sections 25 to 28.

VIII of 1878.

Marking of load-lines in case of coasting-vessels.

**38.** The master of every British ship which is a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before proceeding to sea from any port, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

The centre of this disc shall indicate the maximum load-line in salt-water to which it is intended to load the ship, until notice is given of an alteration.

Annual statement as to position of load-line.

**39.** He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may, from time to time, appoint on this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be punished with fine which may extend to one thousand rupees.

Ship to be kept marked.

**40.** When a ship has been marked as required by section 38, she shall be kept so marked until notice is given of an alteration.

Penalty for neglecting to mark, or submerging, load-line.

**41.** Any master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

shall be punished for each such offence with fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

**42.** If any of the marks required by this chapter is in any respect inaccurate so as to be likely to mislead, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Saving of ships marked in the United Kingdom.

**43.** The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

*Supplemental Provisions.*

Release of ship at any time by Local Government.

[a]**44.** The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Who may enforce detention of ship.

[b]**45.** When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a Port or officer of Customs may detain the ship.

Penalty for proceeding to sea after detention.

[c]**46.** If any ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for carrying to sea officer in execution of his duty.

**47.** When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may enquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

Detained ship not to be released because British registry closed.

[d]**48.** When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Powers of person authorized to survey ship.

[e]**49.** For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

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[a] See 39 & 40 Vic, cap. 80, section 6, clause (7).
[b, c] See 39 & 40 Vic., cap. 80, section 34.
[d, e] See 39 & 40 Vic., cap. 80, section 12, clause (5).

XLV of 1860.

**50.** Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code. Certain persons to be deemed public servants.

[a]**51.** Where any order, notice, statement or document is required for the purpose of any provision of this chapter, to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship, if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or, where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served. Service of order, where there is no master or resident-owner, &c.

[b]**52.** Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship. Order, &c., how to be served.

**53.** The Local Government may, from time to time, by notification in the official Gazette, delegate either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port all or any of the powers, and require the said body to discharge all or any of the functions, of a Local Government under the foregoing sections of this Act, except the powers conferred by section 14, the power of preparing a list of assessors under section 15 and the power of making rules, and may cancel any such notification. Delegation of powers to Port Commissioners, &c.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force, credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

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## CHAPTER III.

### Distressed Seamen.[c]

I of 1859.

**54.** This chapter shall be read with, and taken as part of, Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*). Chapter to be taken as part of Act I of 1859.

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[a, b] See 39 & 40 Vic., cap. 80, section 35.

[c] See 17 & 18 Vic., cap. 104, sections 211 to 213.

Saving of provisions of Merchant Shipping Acts, 1854 and 1855.

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or of section 16 of the Merchant Shipping Act Amendment Act, 1855, apply. 17 & 18 Vic., cap. 104. 18 & 19 Vic. cap. 91.

Local authority."

In this chapter "local authority" means such person as the Local Government may, from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed, on the Local authority under this chapter.

Power to suspend or dismiss

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Relief of distressed seamen at Indian ports.

55. The Local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

(*a*) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant-service or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and who are in distress in any such place; and

(*b*) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and who are in distress in any such place,

until such time as such Authority is able to provide them with a passage as hereinafter provided.

Distressed seamen to be sent home on board British ship wanting seamen to make up its crew.

[b] 56. Subject as aforesaid, the Local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement and is bound—

(*a*) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(*b*) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

(*c*) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the Local authority, subject to the control of the Governor General in Council, may in each case determine.

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[a, b] See 18 & 19 Vic., cap. 91, section 16.

In default of such ship, on board of any ship.

[a]57. In default of any such ship, the Local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

58. The Local authority shall indorse on the agreement of any British ship, on board of which any seaman or apprentice is sent under section 56 or section 57, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

Master of British ship compelled to convey and give subsistence to such seamen.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section 56 or section 57, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

Penalty for refusing so to do.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for any such seaman or apprentice contrary to the provisions of section 59, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Conditions under which master may claim payment.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a Local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(*a*) a certificate signed by the Local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board; and

(*b*) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

[a] See 18 & 19 Vic., cap. 91, section 16.

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

17 & 18 Vic., cap. 104.

62. (*a*) If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(*b*) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign Power or to the subject of any foreign Power, becomes distressed and is relieved as aforesaid; or

(*c*) if any seaman or apprentice belonging to any British ship registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or Foreign, to which he so belonged as aforesaid.

Mode of recovering such wages and expenses.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or, in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

Local Government may authorize persons to recover same

64. The Local Government may from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

Such persons to be deemed persons filling a public office.

I of 1872.

**65.** When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section 62, clause (*c*), they may, instead of being recovered by a person authorized under section 64, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

Board of Trade may recover such amount from master or owner in certain cases.

17 & 18 Vic., cap. 104.

**66.** In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the Local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

What shall be evidence of distress and expenses incurred.

**67.** The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter, and generally to carry out the provisions of this chapter.

Power of Governor General in Council to make rules.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

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## CHAPTER IV.

### Ship Surveyors.

**68.** The Local Government may, from time to time, appoint competent persons for the purposes[a] of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor General in Council, make rules—

Local Government to appoint examiners,

and to make rules as to qualifications &c., of ship surveyors.

(*a*) for the conduct of such examinations and the qualifications to be required;

(*b*) for the grant of certificates to qualified persons;

(*c*) for the fees to be paid for such examinations and certificates;

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[a] *Sic.* Read "purpose."

(*d*) for holding enquiries into charges of incompetency and misconduct on the part of holders of such certificates; and

(*e*) for the suspension and cancelment of such certificates.

Publication of rules.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

No person to practise as ship surveyor unless qualified.

**69.** No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 68, exercise such profession in such port unless he holds a certificate granted under that section:

Surveyors of Lloyd's and Veritas.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

Penalty for practising as ship surveyor without certificate.

**70.** Any person exercising the profession of a ship surveyor in contravention of the provisions of section 69 shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

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## CHAPTER V.

### RECEIVERS OF WRECK.[a]

"Wreck" defined.

**71.** In this chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water;

goods which have been cast or fall into the sea and remain floating on the surface;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;

goods which are thrown away or abandoned, and

a vessel abandoned without hope or intention of recovery.

Repeal of Chapter V of Indian Ports Act, 1875.

**72.** Chapter V of the Indian Ports Act, 1875, and section 5 of Act XIII of 1878[b] (*An Act to provide for the recovery in British India of wages due to,* XII of 1875. XIII of 1878.

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[a] See 17 & 18 Vic., cap. 104, sections 439, 450 and 452.

[b] The whole of Act XIII of 1878 has been repealed by the Indian Merchant Shipping Act, 1883,—see Act V of 1883, section 2.

*and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*) are hereby repealed.

IV of 1875. XII of 1875.

But nothing in this chapter shall be deemed to affect section 40 of the Indian Ports Act, 1875, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

XII of 1875.

Appointment of Receivers.

**73.** The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as it may from time to time prescribe.

Persons so appointed shall be called Receivers of wreck.

Rules to be observed by person finding wreck,

**74.** Any person finding and taking possession of any wreck within any local limits for which a Receiver of wreck has been so appointed shall as soon as practicable—

if he be the owner;

(*a*) if he be the owner thereof, give the Receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

if he be not the owner.

(*b*) if he be not the owner of such wreck, deliver the same to the Receiver of wreck.

Government or person finding wreck entitled to salvage.

**75.** Whenever any wreck is found by the Receiver of wreck or has been delivered to him in accordance with the provisions of section 74 by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Disputes concerning amount of salvage.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

Notice to be given by Receiver.

**76.** The Receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Wreck may in certain cases be sold.

**77.** If after the publication of such notification the wreck is unclaimed, or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the Receiver of wreck in respect thereof,

the Receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

Proceeds how applied

**78.** On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes his claim within one year from the date of the sale.

Penalty for failure to give notice of, or to deliver, wreck to the Receiver of wreck.

**79.** Any person omitting to give notice of the finding of, or to deliver, any wreck to the Receiver of wreck as required by section 74 shall be punished with fine which may extend to one thousand rupees, and, in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck

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## CHAPTER VI.

### Inspection of Ships with regard to Lights and Fog-signals.[a]

Saving clause.

**80.** Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council or belonging to any foreign Prince or State.

Appointment of inspectors of lights and fog-signals.

**81.** The Local Government may, from time to time, appoint persons to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, may apply, for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed. 25 & 26 Vic., cap. 63.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section 11.

Notice of deficiency to

**82.** If any such person finds that any ship is not so provided, he shall

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[a] See 25 & 26 Vic., cap. 63, section 30.

give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same. be given to master or owner by such inspectors.

83. Every notice so given shall be communicated, in such manner as the Local Government may direct, to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port-clearance or allow her to proceed to sea without a certificate, under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law. Ship not to be cleared by Customs-collector till inspector certifies it is properly provided with lights, &c.

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## CHAPTER VII.

### MISCELLANEOUS.

84. Every offence punishable under Chapter II, Chapter III or Chapter V may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency-town in which it might be tried under the law relating to criminal procedure[a] for the time being in force. Offences triable where offender found.

X of 1882.

85.—[*Repealed by Act XIV of 1882, section 3 and Schedule I.*] Assessors in cases of salvage, &c.

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## ACT No. VIII OF 1880.

*Received the Governor General's assent on the 12th March, 1880.*

## An Act to correct a clerical error in the Indian Limitation Act, 1877.[b]

XV of 1877.

IN the second schedule to the Indian Limitation Act, 1877, No. 171A, column three, for the words "The date of the plaintiff's death," the words "The sixtieth day from the date of the plaintiff's death" shall be, and be deemed to have always been, substituted.

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[a] See now Act X of 1882.

[b] This Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutia Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, p. 504.

## ACT No. XII OF 1880.

*Received the Governor General's assent on the 9th July, 1880.*

## An Act for the appointment of persons to the office of Kází.

WHEREAS by the preamble to Act No. XI of 1864[a] (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kází-ul-Kuzát and of Kází, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kází-ul-Kuzát, or of City, Town or Pargana Kázís, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázís appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kází; It is hereby enacted as follows:— XI of 1864.

Short title. 1. This Act may be called "The Kázís' Act, 1880";

Commencement. and it shall come into force at once.

Local extent. It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.[b]

Power to appoint Kázís for any local area. 2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázís should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such

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[a] Repealed by Act VIII of 1868.

[b] The Act has been extended to the following places, namely:—

In the Bombay Presidency, the Ahmadnagar District,—see *Bombay Government Gazette* 23rd March, 1882, Part I, p. 218.

The Province of Sindh,—see *Bombay Government Gazette*, 20th December, 1883, Part I, p. 1002.

In the Lower Provinces, the Districts of Backergunge, Bogra, Chittagong, Dacca, Dinagepore, Furreedpore, Jessore, Mymensingh, Noakhally, Nuddea, Rajshahye, Rungpore, Pubna and Tipperah,—see *Calcutta Gazette*, 4th June, 1884, Part I, p. 660.

In the Panjáb, the Amritsar, Lahore and Rawalpindi Divisions, the trans-Indus portion of the Derá Ismail Khán District, and the District of Derá Ghází Khán,—see *Panjáb Gazette*, 23rd February, 1882, Part I, p. 106, and 15th March, 1883, Part I, p. 99.

In British Burma, the Akyab District,—see *British Burma Gazette*, 10th June, 1882, Part I, p. 293.

In Assam, the Districts of Silhát and Káchar,—see *Assam Gazette*, 20th August, 1881, p. 314, and 16th December, 1882, Part I p. 852.

It has also been extended to various individual towns, parganas and other small areas in the Bombay Presidency, the North-Western Provinces and Oudh.

local area, select one or more fit persons and appoint him or them to be Kázís for such local area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

Náib Kázís.

3. Any Kází appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kází is suspended or removed under section 2, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers; or to render the presence of Kází necessary; or to prevent any one acting as Kází.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(*a*) to confer any judicial or administrative powers on any Kází or Náib Kází appointed hereunder; or

(*b*) to render the presence of a Kází or Náib Kází necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(*c*) to prevent any person discharging any of the functions of a Kází.

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## ACT No. III of 1881.

*Received the Governor General's assent on the 15th January, 1881.*

## An Act to provide for certain matters relating to Securities of the Government of India.[a]

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the

[a] This Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutía Nágpur Division, namely:—
the Districts of Hazáribágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm and the Kolhan in the District of Singhbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India;

It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

# THE PROBATE AND ADMINISTRATION ACT, 1881.

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## ACT No. V OF 1881.

*Received the Governor General's assent on the 21st January, 1881.*

# An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble. WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

X of 1865.

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## CHAPTER I.

### PRELIMINARY.

Short title. 1. This Act may be called "The Probate and Administration Act, 1881":

Local extent. It applies to the whole of British India;[a]

Commencement. and it shall come into force on the first day of April, 1881.

Personal application. 2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutía Nagpur Division, namely:—
the Districts of Hazáribágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm and the Kolhán in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881: X of 1865.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies,[a] no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.[b] XXI of 1870.

Interpretation clause.

[c]3. In this Act, unless there be something repugnant in the subject or context,—

"Province." "Province" includes any division of British India having a Court of the last resort:

"minor:" "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority with the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person: IX of 1875.

"minority:"

"will:" "will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

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[a] The Hindú Wills Act, 1870, applies in the cases of Hindús, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay.

[b] The following Courts have been authorized to receive applications for probate or letters of administration within the areas mentioned, namely:—

In Bengal, the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal, and all District Judges as defined in the Act, within the said territories, and such judicial officers as the High Court may, from time to time, appoint as District Delegates,—see *Calcutta Gazette*, 20th April, 1881, Part I, page 445.

In the Panjáb: the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Panjáb, and all District Judges, as defined in the Act, within the said territories, and such judicial officers as the Chief Court may, from time to time, appoint as District Delegates,—see *Panjáb Gazette*, 6th October, 1881, Part I, page 483.

In the Andaman and Nicobar Islands: the Courts of the Deputy Superintendent and the Chief Commissioner, - see *Gazette of India*, 28th May, 1881, Part I, page 214.

In Assam: the High Court at Calcutta, throughout Assam, and all District Judges as defined in the Act, within the Province, and such judicial officers as the High Court may, from time to time, appoint as District Delegates,—see *Assam Gazette*, 27th August, 1881, Part I, page 337.

[c] Compare Act X of 1865, section 3.

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"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will: "codicil:"

"specific legacy" means a legacy of specified property: "specific legacy:"

"demonstrative legacy" means a legacy directed to be paid out of specified property: "demonstrative legacy:"

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: "probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: "executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and "administrator:"

"District Judge" means the judge of a principal Civil Court of original jurisdiction. "District Judge."

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## CHAPTER II.

### Of Grant of Probate and Letters of Administration.[a]

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

*Illustrations.*

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

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[a] Compare Act X of 1865, Part XXIX.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

**8.** Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

**9.** When several executors are appointed, probate may be granted to them all simultaneously or at different times.

*Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

**10.** If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

**11.** When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

**12.** Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

**13.** Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

**14.** Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

**15.** Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

**16.** When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

**17.** The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

**18.** If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

**19.** When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

**20.** When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

**21.** When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

**22.** Letters of administration with the will annexed shall not be granted to any legatee other than an universal or residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

**23.** When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

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## CHAPTER III.

### Of Limited Grants.[a]

### (*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

**24.** When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

**25.** When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

**26.** When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

**27.** Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

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[a] Compare Act X of 1865, Part XXX (*a*) to (*f*).

(*b*).—*Grants for the Use and Benefit of Others having Right.*

Administration with will annexed to attorney of absent executor.

**28.** When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

**29.** When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

**30.** When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

**31.** When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

**32.** When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

**33.** If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule[a] for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

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*Sic.* Read "rules."

Administration *pendente lite.*

**34.** Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(*c*).—*For Special Purposes.*

Probate limited to purpose specified in will.

**35.** If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

**36.** If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

**37.** Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

**38.** When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

**39.** If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

**40.** In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

**41.** When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

### (*d*).—*Grants with Exception.*

Probate or administration with will annexed subject to exception.

**42.** Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

**43.** Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

### (*e*).—*Grants of the rest.*

Probate or administration of rest.

**44.** Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

### (*f*).—*Grants of Effects unadministered.*

Grant of effects unadministered.

**45.** If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of

**46.** In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants,

effects unadministered.

and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

**47.** When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

## CHAPTER IV.

### Alteration and Revocation of Grants [a]

What errors may be rectified by Court.

**48.** Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

**49.** If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

**50.** The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

*1st*, that the proceedings to obtain the grant were defective in substance;

*2nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

*3rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

*4th*, that the grant has become useless and inoperative through circumstances.

*Illustrations.*

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

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[a] Compare Act X of 1865, Part XXX (*g*) and (*h*).

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

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## CHAPTER V.

### OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.[a]

Jurisdiction of District Judge in granting and revoking probates, &c.

**51.** The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

**52.** The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

**53.** The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

**54.** The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

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[a] Compare Act X of 1865, Part XXXI, as amended by Acts XIII of 1875, and VI of 1881.

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default, XLV of 1860.

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

**55.** The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.[a] XIV of 1882.

When probate or administration may be granted by District Judge.

**56.** Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

**57.** When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

**58.** Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

**59.** Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is[b] granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their

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[a] See Act XIV of 1882, section 3.

[b] Add "or are."

debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

**60.** Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants a certificate to the following effect:—

"I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.*, of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India";

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

**61.** The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

**62.** Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

Verification of translation by person other than Court translator.

**63.** In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

**64.** Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

**65.** Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in

addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

**66.** The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

**67.** Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

**68.** If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.[a]

District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings

**69.** In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

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[a] See Act XLV of 1860, Chapter XI.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

**70.** Caveats against the grant of probate or letters of administration may be lodged with the district Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

**71.** The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

**72.** No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

**73.** A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

EXPLANATION.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

**74.** In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions

as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

**75.** In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

**76.** Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

"The day of 18 ."

Grant of letters of administration to be under seal of Court.

**77.** Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the

deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

"The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection getting in and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator[a] or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

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[a] *Sic.* Read "testators."

Procedure in contentious cases.

**83.** In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,[a] in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

XIV of 1882.

Payment to executor or administrator before probate or administration revoked.

**84.** Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

**85.** Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

XXI of 1870.

Appeals from orders of District Judge.

**86.** Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure[a] applicable to appeals.

XIV of 1882.

Concurrent jurisdiction of High Court.

**87.** The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

## CHAPTER VI.

### OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.[b]

In respect of causes of action surviving deceased, and debts due at death.

**88.** An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against

**89.** All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time

[a] See Act XIV of 1882, section 3.

[b] Compare Act X of 1865, Part XXXIII.

deceased survive to and against executor or administrator.

of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory. XLV of 1860.

*Illustration.*

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit :

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

*Illustrations.*

(*a*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

*Illustrations.*

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

**93.** Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

**94.** The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

**95.** An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

**96.** When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

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## CHAPTER VII.

### Of the Duties of an Executor or Administrator.[a]

As to deceased's funeral ceremonies.

**97.** It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

**98.** An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory to include property in any part of British India.

**99.** In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include

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[a] Compare Act X of 1865, Part XXXIV, as amended by Act XIII of 1875.

in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

As to property of, and debts owing to, deceased.

**100.** The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

**101.** Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

**102.** The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceeding, that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

**103.** Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as aforesaid, all debts to be paid equally and rateably.

**104.** Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

**105.** Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

**106.** If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

**107.** If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Executor not to pay one legatee in preference to another.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

**108.** Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

**109.** Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

**110.** If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

*Illustration.*

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

**111.** For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

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## CHAPTER VIII.

### Of the Executor's Assent to a Legacy.[a]

Assent necessary to complete legatee's title.

**112.** The assent of the executor is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no other authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

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[a] Compare Act X of 1865, Part XXXV.

Effect of executor's assent to specific legacy.

**113.** The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

*Illustrations.*

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

**114.** The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

*Illustrations.*

(*a*) A bequeaths to B his lands of Sultánpur, which at the date of the will and at the death of A were subject to a mortgage for 10,000 rupees The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

**115.** When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

*Illustration.*

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

**116.** The assent of the executor to a legacy gives effect to it from the death of the testator.

*Illustrations.*

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

**117.** An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

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## CHAPTER IX.

### OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.[a]

Commencement of annuity when no time fixed by will.

**118.** Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity to be paid quarterly or monthly, first falls due.

**119.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Date of successive payments when first payment directed to be made within given time, or on day certain.

**120.** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

[a] Compare Act X of 1865, Part XXXVI.

Apportionment where annuitant dies between times of payment.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

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## CHAPTER X.

### Of the Investment of Funds to provide for Legacies.[a]

Investment of sum bequeathed where legacy, not specific, given for life.

**121.** Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

**122.** Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

**123.** Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of contingent bequest.

**124.** Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

**125.** Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

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[a] Compare Act X of 1865, Part XXXVII, as amended by Act VI of 1881.

Time and manner of conversion and investment.

**126.** Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

**127.** Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

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## CHAPTER XI.

### Of the Produce and Interest of Legacies.[a]

Legatee's title to produce of specific legacy.

**128.** The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest contingent in its terms does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

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[a] Compare Act X of 1865, Part XXXVIII.

*Illustrations.*

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

**129.** The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

EXCEPTION.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

*Illustrations.*

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

**130.** Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

EXCEPTIONS.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed

**131.** Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

EXCEPTION.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

**132.** The rate of interest shall be six per cent. per annum. Rate of interest.

**133.** No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity. No interest on arrears of annuity within first year after testator's death.

**134.** Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator. Interest on sum to be invested to produce annuity.

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## CHAPTER XII.

### OF THE REFUNDING OF LEGACIES.[a]

**135.** An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies. Refund of legacy paid under Judge's orders.

**136.** When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies. No refund if paid voluntarily.

**137.** When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount. Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to

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[a] Compare Act X of 1865, Part XXXIX.

have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

**138.** When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

[a]**139.** Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

[a]**140.** A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

**141.** If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

**142.** If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

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[a] For limitation of suits under sections 139 and 140, see Act XV of 1877, Schedule II, No. 48, *supra*, page 107.

**143.** The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered. Limit to refunding of one legatee to another.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

**144.** The refunding shall in all cases be without interest. Refunding to be without interest

**145.** The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will. Residue after usual payments to be paid to residuary legatee.

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## CHAPTER XIII.

### Of the Liability of an Executor or Administrator for Devastation.[a]

**146.** When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned. Liability of executor or administrator for devastation.

*Illustrations.*

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

**147.** When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. For neglect to get in any part of property.

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[a] Compare Act X of 1865, Part XL.

*Illustrations.*

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits[a] and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt. XV of 1877.

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## CHAPTER XIV.

### MISCELLANEOUS.

Provisions applied to administrator with will annexed.

**148.** In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

**149.** Nothing herein contained shall—

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.[b]

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

**150.** No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Budhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act. X of 1865.

Repeal of portions of Act XXVII of 1860.

**151.** In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed. XXVII of 1860.

Grant of probate or

**152.** The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously

[a] See Act XV of 1877. [b] See Act II of 1874.

XXVII of 1860. Bom. Reg. VIII of 1827.

granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

VII of 1870.

**153.** In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

Amendment of Court-fees Act.

"Provided that when, after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

XXI of 1870.

**154.** The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*) For the portion of section 2 commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*) The third clause of section 3 and the last clause of section 6 shall be repealed.

(*c*) In section 6, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

**155.** All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force, have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

X of 1865.

Validation of grants of probate and administration made in British Burma.

XV of 1877.

**156.** In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

## ACT No. VI of 1881.

*Received the Governor General's assent on the 21st January, 1881.*

# An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

Preamble.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The District Delegates Act, 1881":

Extent.

It extends to the whole of British India;[a]

Commencement.

and it shall come into force on the first day of April, 1881.

Addition of section after section 235 of Succession Act.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:— X of 1865.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"235 A.[b] The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates.'"

Addition of section after section 241 of same Act.

3. After section 241 of the said Act, the following section shall be added:— X of 1865.

Probate and letters of administration may be granted by Delegate.

"241 A.[c] Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such delegate."

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[a] The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely

the Districts of Hazáribágh, Lohárdaga and Mánbhúm, and Pargana Dhálbhúm and the Kolhán in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

[b] Compare Act V of 1881, section 52.

Compare Act V of 1881, section 58.

X of 1865. **4.** To sections 244 and 246 of the said Act, respectively, the following words shall be added :— Addition to sections 244 and 246 of same Act.

[a] "and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

X of 1865. **5.** For section 251 of the said Act, the following section shall be substituted :— Substitution of section for section 251 of same Act.

"251.[b] Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same." Caveats against grant of probate or administration.

X of 1865. **6.** In section 253 of the said Act,[c] after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted. Amendment of section 253 of same Act.

X of 1865. **7.** After section 253 of the said Act, the following sections shall be added :— Addition of sections after section 253 of same Act.

"253 A.[d] A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court. District Delegate when not to grant probate or administration.

"EXPLANATION.—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

"253 B.[e] In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Power to transmit statement to District Judge in doubtful cases where no contention.

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[a] Compare Act V of 1881, sections 62 and 64.
[b] " " " section 70.
[c] " " " " 72.
[d] " " " " 73.
[e] " " " " 74.

Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

" 253 C.[a] In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Amendment of sections 254, 255 and 308 of same Act.

8. In the said Act, sections 254 and 255, respectively,[b] after the words "I, Judge of the District of ," the words " [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*) ]"; and in section 308,[c] after the words "District Judge, by whom" the words " or by whose District Delegate," shall be inserted. X of 1865.

Introduction of the words " or District Delegate" in certain sections of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words " District Judge," and in section 250 and section 254 (when it first occurs) after the word " Judge," the words "[d] or District Delegate" shall be inserted, respectively. X of 1865.

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# THE PETROLEUM ACT, 1881.

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## ACT No. VIII OF 1881.

*Received the Governor General's assent on the 5th February, 1881.*

# An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

Preamble.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

*Preliminary.*

Short title. Commencement.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Local extent.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act [a] extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments.

2. The Indian Ports Act, 1875, section 37, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of inflammable oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed. XII of 1875. Ben. III of 1865.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"petroleum:"

[b] "petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

EXPLANATION.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the schedule hereto annexed:

"dangerous petroleum."

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"import:"

"import" means to bring into British India by sea or land:

"importation:"

and "importation" means the bringing into British India as aforesaid:

"transport."

"transport" means to remove from one place to another within British India.

*Dangerous Petroleum.*

Dangerous petroleum in quantities exceeding 40 gallons.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

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[a] Extended to the port and city of Madras and to all Municipalities in the Madras Presidency,—see *Fort St. George Gazette*, 28th August, 1883, Part I, page 552; also, to the ports and towns of Rangoon, Maulmain, Akyab and Bassein,—see *British Burma Gazette*, 16th July, 1881, Part I, page 166.

[b] See 34 & 35 Vic., cap. 105, section 3.

Every application for such a license shall be in writing, and shall declare— Application for license to import, transport or possess such petroleum.

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit. Power to grant license.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license: Dangerous petroleum in quantities not exceeding 40 gallons.

[a] Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

[b] 6. All dangerous petroleum— Vessels containing dangerous petroleum to be marked.

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

*Petroleum generally.*

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular— Power to make rules as to the importation of petroleum.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

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[a] See 34 & 35 Vic., cap. 105, section 7.

[b] See 34 & 35 Vic., cap. 105, section 6.

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship:" "ship" includes anything made for the conveyance by water of human beings or property;

"master." "master" includes every person (except a pilot or harbour-master) having for the time being the charge or control of a ship.

Possession and transport of petroleum.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Power to make rules as to such possession and transport.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say,—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*i*) the time during which it is to continue in force, and

(*j*) the renewal of the license.[a]

Power to inspect and require dealer

[a] 10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to

[a] See 34 & 35 Vic., cap. 105, section 11.

show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples. to sell samples.

[a]**11.** When any such officer has, in exercise of the powers conferred by section 10, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing. Notice to be given when officer proposes to test samples.

[b]**12.** On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request. Certificate as to result of such testing.

*Penalties.*

**13.** Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. Penalty for illegal importation, &c., of petroleum.

[c]**14.** Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section 6 shall be punished with fine which may extend to fifty rupees. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

[d]**15.** Any dealer in petroleum who refuses or neglects to show to any officer authorized under section 10 any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance Penalty for refusing to comply with section 10.

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[a, b] See 34 & 35 Vic., cap. 105, section 11.
[c] See 34 & 35 Vic., cap. 105, section 6.
[d] See 34 & 35 Vic., cap. 105, section 12.

as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

**16.** In any case in which an offence under section 13 or section 14 has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or,

(*b*) where the offender is importing, or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

**17.** The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

*Miscellaneous.*

Rules when to have force of law.

**18.** All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

Power to apply this Act to other fluids.

[a] **19.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections 4, 5 and 8, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

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THE SCHEDULE.

*Specification explanatory of the Test Apparatus.*[b]

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height

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[a] See 34 & 35 Vic., cap. 105, section 14.

[b] See 34 & 35 Vic., cap. 105, Schedule I.

(*Schedule.*)

*Specification explanatory of the Test Apparatus.*

(internal), with outward projecting rim $\frac{5}{10}''$ wide, $\frac{3}{8}''$ from the top and $1\frac{7}{8}''$ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}''$. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.), which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate : it is provided with a spout the mouth of which is $\frac{1}{16}''$ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted, that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}''$ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}''$ by $\frac{4}{10}''$, and two smaller ones, $\frac{3}{10}''$ by $\frac{2}{10}''$, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}''$ height, and an outer one of $5\frac{1}{2}''$ diameter and $5\frac{3}{4}''$ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer

*Directions for applying the Test.*

to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is 6½″. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about 3½″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb 2¼″.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

*Directions for applying the Test.*

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication, or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

(*Schedule.*)

*Directions for applying the Test.*

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,[a] which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

[a] This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

(*Secs. 1-3.*)

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

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## ACT No. IX OF 1881.[a]

*Received the Governor General's assent on the 25th February, 1881.*

## An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, II of 1874. but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Administrator General's Act, 1881": and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Act No. II of 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the II of 1874. word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section 23 of the same Act, the following section shall be II of 1874. inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all

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[a] This Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chutia Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga, and Manbhúm, and Pargana Dhálbhúm and the Kolhán in the District of Singbhúm,—see *Gazette of India*, 22nd October, 1881, Part I, page 504.

debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

II of 1874. **4.** For section 28 of the same Act, the following section shall be substituted:— New section substituted for section 38 of same.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay. Distribution of assets.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

II of 1874. X of 1865. **5.** In section 36 of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act" shall be repealed; and in section 37 of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act." Amendment of sections 36 and 37 of same.

II of 1874. **6.** In section 38 of the same Act, for the words "such certificate" the words "certificate under section 36 or 37" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed. Amendment of section 38 of same.

(*Preamble.*)

New section inserted after section 55 of same.

7. After section 55 of the same Act, the following section shall be inserted :— II of 1874.

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section 61 of the same Act, the following section shall be inserted :— II of 1874.

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

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## ACT No. X OF 1881.

*Received the Governor General's assent on the 25th February, 1881.*

## An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court; IV of 1871.

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section 9 of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the General Police of the Madras Presidency, and for other purposes*) as Mad VIII of 1867

X of 1872 amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title Commencement.

**1.** This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

IV of 1871. Partial repeal of Act IV of 1871, section 1.

**2.** The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

**3.** [*Omitted, as applying only to Madras*]

Sections 174 to 176 of Act X of 1882[a] to extend to area excluded from Coroner's jurisdiction.

**4.** [*Omitted, as applying only to Madras.*]

IV of 1871. Act IV of 1871, section 8, amended.

**5.** In section 8 of the Coroners' Act, 1871, for the words "is informed" the words "has reason to believe" shall be substituted.

IV of 1871. Section 17 of same Act amended.

**6.** For the first two clauses of section 17 of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175 or section 176 of the Indian Penal Code, as the case may be."

XLV of 1860.

IV of 1871. Addition to section 20 of same Act.

**7.** To section 20 of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

I of 1872. "For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867. (Law to govern Town Police)

**8.** [*Repealed by Act X of 1882.*]

[a] See Act X of 1882, section 3.

Act X of 1872, Schedule V, in part repealed.

9. [*Repealed by Act X of 1882.*]

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## ACT No. XI OF 1881.

*Received the Governor General's assent on the 25th February, 1881.*

## An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India;

Commencement.

and shall come into force at once. repealed.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Act, 1881[a] or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or 44 & 45 Vic., cap. 58. V of 1869.

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

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[a] See 44 & 45 Vic., cap. 58, section 191 (3).

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

**5.** So long as any order made under section 3, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

**6.** If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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# THE INDIAN FACTORIES ACT, 1881.

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## ACT No. XV OF 1881.

*Received the Governor General's assent on the 15th March, 1881.*

## An Act to regulate labour in Factories.

Preamble.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows:—

*Preliminary.*

Short title.

1. This Act may be called "The Indian Factories Act, 1881."

Local extent. Commencement.

It applies to the whole of British India, ~~and shall come into force on the first day of July, 1881.~~

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"factory:"

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(*a*) wherein steam, water or other mechanical power is used in aid of any such process, and

subject to the provision of s. 20. fifty

(*b*) wherein not less than ~~one hundred~~ persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

fourteen

"child" means a person under the age of ~~twelve~~ years: "child:"

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine: "mill-gearing:"

[a] person

a ~~child~~ who works in a factory, whether for wages or not, ~~either~~ in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act. "employed."

*Inspectors and certifying Surgeons.*

[b] **3.** The Local Government may, in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed. Inspectors.

by name or by office

~~In default of such appointment~~, the District Magistrate [c] shall, in virtue of his office, be Inspector of all factories (if any) in the district.

Such Inspectors shall be deemed public servants within the meaning of
860. the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

**4.** An Inspector of factories may, within the local limits for which he is appointed,— Powers of Inspector.

(*a*) [d] enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise

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[a] See 41 Vic., cap. 16, section 94.

[b] See 3 & 4, Wm. IV, cap. 103, section 17.

[c] See Act X of 1882, section 3.

[d] See 7 Vic., cap. 15, section 3; 8 & 9 Vic., cap. 29, section 4; and 30 & 31 Vic., cap. 146, section 10.

such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

Certifying surgeons.

**5.** The civil surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

*Children.*

Age of employment.

[a] **6.** No child shall be employed in any factory if he is under the age of seven years.

Hours of employment for children.

**7.** No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the district in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

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[a] See 3 & 4, Wm. IV, cap. 103, section 7; 7 Vic., cap 15, section 29; 8 & 9 Vic., cap. 29, section 19; 30 & 31 Vic., cap. 146, section 6, clause (1); and 37 & 38 Vic., cap. 44, section 13.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

Child to be allowed holidays.

**8.** Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

Not to be employed in two factories on same day.

**9.** No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be engaged in certain dangerous work.

[a] **10.** No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

[b] **11.** The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory and of their respective employments.

*Fencing.*

Fencing.

**12.** (*a*) Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

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[a] See 7 Vic., cap. 15, section 20.

[b] See 41 Vic., cap. 16, section 77.

[c] See 7 Vic., cap 15, section 21; 19 & 20 Vic., cap 38, section 4; and 30 & 31 Vic., cap. 103, section 10.

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set side, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

*Notices.*

Notice to be given of accidents.

[a] **13.** When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of ~~such~~ accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Person beginning to occupy factory to give notice.

[b] **14.** Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person ~~(if any)~~ under whom the business of the factory is to be carried on.

*Penalties.*

Penalties.

[c] **15.** Any person who, in breach of this Act, or of any order or rule made hereunder,—

(*a*) [d] employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section 7, or to fix the days referred to in section 8;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section 10;

(*d*) neglects to keep a register in manner prescribed under section 11;

(*e*) [e] neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees:

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[a] See 7 Vic., cap. 15, section 22.

[b] See 41 Vic., cap. 16, section 75.

[c] See 42 Geo. III, cap. 73, section 13, and 3 & 4 Wm. IV, cap. 103, sections 24 and 31.

[d] See 7 Vic., cap. 15, section 56; 8 & 9 Vic., cap. 29, section 39; and 30 & 31 Vic., cap. 146; section 7.

[e] See 7 Vic., cap. 15, section 43, and 19 & 20 Vic., cap. 38, section 6.

Provided that—

*1st*, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

[a] *2nd*, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed. Only one penalty for same kind of offence on one day.

[b] **16.** Where an act or omission would, if a person were under ~~seven~~ fourteen or ~~twelve~~ years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age. Burden of proof as to age.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person. Certifying surgeon's declaration in writing.

[c] **17.** Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor. Occupier primarily liable for breaches of Act.

*Miscellaneous.*

**18.** The Local Government may, from time to time, make rules consistent with this Act to provide for— Power to make rules.

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

[d] **19.** This Act shall apply to factories belonging to the Crown: Provided that, in case of any public emergency, the Governor General in Council or the Crown factories.

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[a] See 3 & 4 Wm. IV, cap. 103, section 43; and 7 Vic., cap. 15, section 44.

[b] See 19 & 20 Vic., cap. 15, section 53; and 41 Vic., cap 16, section 92.

[c] See 7 Vic., cap. 15, section 41; 8 & 9 Vic., cap 29, section 30; 24 & 25 Vic., cap. 117, section 3; 30 & 31 Vic., cap. 103; and 30 & 31 Vic., cap. 146, section 11.

[d] See 41 Vic., cap. 16, section 93.

Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

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## ACT No. XVI of 1881.

*Received the Governor General's assent on the 15th March, 1881.*

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate[a]

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[a] See Act X of 1882, section 3.

or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

**4.** The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

**5.** If, after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

**6.** On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

**7.** For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

**8.** The Governor General in Council may, from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit, in any fairway loading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

**9.** Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(*Preamble.*)

Compensation payable in certain cases for damage caused under this Act.

**10.** Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes[a] and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate. X of 1870.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

**11.** Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

**12.** Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

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## ACT No. XVII of 1881.

*Received the Governor General's assent on the 25th May, 1881.*

## An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish

[a] See Act X of 1870.

between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions;

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force;

And whereas the said Treaty came into force on the fifteenth day of January, 1880;

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made;

It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Portuguese Convention Act, 1881."

Local extent. It extends to the whole of British India.

Commencement and continuance. It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted. **2.** The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

XXIII of 1870. Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention. **3.** The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

WHEREAS, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty

comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex* around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era and the words *India Portugueza.*

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

*Silver.*—Rupee, weighing 180 grains troy;
Half-rupee, weighing 90 grains troy;
Quarter-rupee, weighing 45 grains troy;
Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

| | Remedy in weight. | Remedy in fineness. |
|---|---|---|
| Rupee . . . . . | Five thousandths . | Two thousandths. |
| Half-rupee . . . . | | |
| Quarter-rupee . . . . | Seven thousandths . | Three thousandths. |
| Eighth of a rupee . . . | Ten thousandths . | |

*Copper.*—Half *tanga,* weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga,* weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga,* weighing 50 grains troy, and corresponding with the half-pice of British India;

*Real,* or twelfth of a *tanga,* corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reales* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for re-coinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums, in such denominations of coin and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

*1stly.*—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

*2ndly.*—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance

shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

*3rdly.*—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the mint at Bombay, or at such other mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin presented at the said mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seigniorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender

in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; and the expense so incurred shall be borne by the Government of British India.

**11.** The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

**12.** Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

| | |
|---|---|
| Five-rupee notes, payable in copper. | |
| Ten-rupee notes, payable in silver. | |
| Twenty-rupee | ditto. |
| Fifty-rupee | ditto. |
| One hundred-rupee | ditto. |
| Five hundred-rupee | ditto. |

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

**13.** The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council called "The Indian Weights and Measures of Capacity Act, 1871,"[a] then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act. XXXI of 1871.

**14.** This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

**15.** The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck

[a] This Act has never yet been brought into force.

in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd) CAETANO ALDRED 'ALMEIDA ALBUQUERQUE,
*Governor General of Portuguese India.*

Done at Calcutta, on the eighteenth day of March, one thousand eight hundred and eighty

(Sd.) LYTTON,
*Viceroy and Governor General of British India.*

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# THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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BENGAL SECRETARIAT LIBRARY.

## ACT No. XXVI OF 1881.

*Received the Governor General's assent on the 9th December, 1881.*

# An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:— Preamble.

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## CHAPTER I.

### PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881": Short title.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 25,[a] or affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; Local extent. Saving of usages relating to hundís, &c.

XX of 1882.

And it shall come into force on the first day of March, 1882. Commencement.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. Repeal of enactments.

3. In this Act— Interpretation-clause.

"Banker" includes also persons or a corporation or company acting as bankers; and "Banker."

"Notary public" includes also any person appointed by the Governor General in Council to perform the functions of a notary public under this Act. "Notary public."

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## CHAPTER II.

### OF NOTES, BILLS AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by "Promissory note."

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[a] See Act XX of 1882, section 2.

the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

*Illustrations.*

A signs instruments in the following terms:—

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

"Bill of exchange."

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawer." "Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need." "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor." "Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." "Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. "Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "Payment in due course."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument. Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

"Negotiable instrument."

**13.** A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Negotiation.

**14.** When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement.

**15.** When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full."

**16.** If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

"Indorsee."

Ambiguous instruments.

**17.** Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words

**18.** If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand.

**19.** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

**20.** Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight." "On presentment." "After sight."

**21.** In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight"

means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

**22.** The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date or sight.

**23.** In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after dateor after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

*Illustrations.*

(*a*) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

Calculating maturity of bill or note payable so many days after date or sight.

**24.** In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday.

**25.** When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

EXPLANATION.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next

following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

## CHAPTER III.

### Parties to Notes, Bills and Cheques.

Capacity to make, &c., promissory notes, &c.

**26.** Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

**27.** Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

**28.** An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

**29.** A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

**30.** The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

**31.** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay

the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

**32.** In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour.

**33.** No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners.

**34.** Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser.

**35.** In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

**36.** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

**37.** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

**38.** As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

*Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

**39.** When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. IX of 1872.

Discharge of indorser's liability.

**40.** Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration.*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams"
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound, although indorsement forged.

**41.** An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

**42.** An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, &c., without consideration.

**43.** A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him,

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may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

EXCEPTION I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

EXCEPTION II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money-consideration.

**44.** When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

EXPLANATION.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

*Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money.

**45.** Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

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## CHAPTER IV.

### OF NEGOTIATION.

Delivery.

**46.** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery.

**47.** Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

EXCEPTION.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

*Illustrations.*

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement.

**48.** Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full.

**49.** The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement.

**50.** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instru-

ment, or to receive its contents for the indorser, or for some other specified person.

*Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate.

**51.** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

EXPLANATION.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

**52.** The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

*Illustrations.*

(*a*) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course.

**53.** A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument indorsed in blank.

**54.** Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full.

**55.** If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

**56.** No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

**57.** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful means or for unlawful consideration.

**58.** When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when overdue.

**59.** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some

party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

*Illustration.*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction.

**60.** A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

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## CHAPTER V.

### Of Presentment.

Presentment for acceptance.

**61.** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Presentment of promissory note for sight.

**62.** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

**63.** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment.

**64.** Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

EXCEPTION.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment.

**65.** Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

**66.** A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments

**67.** A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere.

**68.** A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

**69.** A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified.

**70.** A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, &c., has no known place of business or residence.

**71.** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

**72.** A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

**73.** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

**74.** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

**75.** Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

When presentment unnecessary.

**76.** No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

**77.** When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

## CHAPTER VI.

### OF PAYMENT AND INTEREST.

To whom payment should be made.

**78.** Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

**79.** When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

**80.** When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532,[a] be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs. XIV of 1882.

EXPLANATION.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

**81.** Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

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## CHAPTER VII.

### OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

**82.** The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

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[a] See Act XIV of 1882, section 3.

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; by release;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon. by payment.

**83.** If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder. Discharge by allowing drawee more than twenty-four hours to accept.

**84.** When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder. When cheque not duly presented and drawer damaged thereby.

**85.** Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Cheque payable to order.

**86.** If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Parties not consenting discharged by qualified or limited acceptance.

EXPLANATION.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

**87.** Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such Effect of material alteration.

alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Acceptor or indorser bound notwithstanding previous alteration.

**88.** An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

**89.** Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

**90.** If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

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## CHAPTER VIII.

### Of Notice of Dishonour.

Dishonour by non-acceptance.

**91.** A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

**92.** A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

**93.** When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who

remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

**94.** Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

**95.** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

**96.** When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

**97.** When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

**98.** No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

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## CHAPTER IX.

### Of Noting and Protest.

Noting.

**99.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

**100.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

**101.** A protest under section 100 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

**102.** When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

**103.** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

**104.** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

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## CHAPTER X.

### Of Reasonable Time.

Reasonable time.

**105.** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

**106.** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

**107.** A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI.

### Of Acceptance and Payment for Honour and Reference in case of Need.

Acceptance for honour.

**108.** When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

How acceptance for honour must be made.

**109.** A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

Acceptance not specifying for whose honour it is made.

**110.** Where the acceptance does not express for whose honour it is made it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

**111.** An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

**112.** An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

**113.** When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

**114.** Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

**115.** Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

**116.** A drawee in case of need may accept and pay the bill of exchange without previous protest.

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## CHAPTER XII.

### OF COMPENSATION.

Rules as to compensation

**117.** The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532[a]) be determined by the following rules:—

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(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the

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[a] See Act XIV of 1882, section 3.

party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

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## CHAPTER XIII.

### Special Rules of Evidence.

Presumptions as to negotiable instruments—of consideration;

**118.** Until the contrary is proved, the following presumptions shall be made:—

(*a*) that every negotiable instrument was made or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsements;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

that holder is a holder in due course

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest.

**119.** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

**120.** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

**121.** No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

**122.** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

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## CHAPTER XIV.

### Of crossed Cheques.

Cheque crossed generally.

**123.** Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

**124.** Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

**125.** Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially, to another banker, his agent, for collection.

Payment of cheque crossed generally.

**126.** Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

**127.** Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

**128.** Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be

entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course

**129.** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable."

**130.** A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Non-liability of banker receiving payment of cheque.

**131.** A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

## CHAPTER XV.

### Of Bills in Sets.

Set of bills.

**132.** Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to all

**133.** As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI.

### Of International Law.

Law governing liability of maker,

**134.** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque

is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable. acceptor or indorser of foreign instrument.

*Illustration.*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

**135.** Where a promissory note, bill of exchange, or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient. Law of place of payment governs dishonour.

*Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

**136.** If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India. Instrument made, &c., out of British India, but in accordance with its law.

**137.** The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved. Presumption as to foreign law.

## SCHEDULE.

(*a*)—STATUTES.

| Year and chapter. | Title. | Extent of repeal. |
|---|---|---|
| 9 Wm. III, c. 17 | An Act for the better payment of Inland Bills of Exchange. | The whole. |
| 3 & 4 Anne, c. 8 | An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange. | The whole. |

(*Schedule.*)

(*b*)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| VI of 1840 . . | An Act for the amendment of the law concerning the negotiation of Bills of Exchange. | The whole. |
| V of 1866 . . | An Act to amend in certain respects the Commercial Law of British India. | Sections 11, 12 and 13. |
| XV of 1874 . . | The Laws Local Extent Act, 1874 . . | The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13. |

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